

# B.C.T GM LOCAL 70



## Facsimile

Date/Time: 6-30-21	Pages (Cover Sheet Included): 2
To: Terence Bean	Phone:
Company: NLRB	Fax: 616 456-2596
From: Mayra Ramirez/ Secretary	Re: Kellogg's

☐ URGENT   ☐ FOR REVIEW   ☐ PLEASE COMMENT   ☐ CONFIRM WHEN RECEIVED

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158-36<sup>TH</sup> ST. SE  
Grand Rapids, MI 49548

Phone: (616) 243-7383  
Fax: (616) 243-5624

The information contained in this communication is confidential and intended only for the recipient. If you have received this in error, please notify the sender immediately by phone and return the original fax by mail to the address on this cover sheet.  
Thank you.

**REGION 7 – DOCKET SHEET (Charge Against EMPLOYER ☒ UNION ☐)**

<b>Inquiry #</b>	<b>Case #</b> 07-CA-279243
<b>Method of Receipt:</b>	Fax

<b>Assigned To</b>	Supervisor	CAROL	Agent	BEAN
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<b>Dispute Location</b>	City	Grand Rapids	State	MI
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<b>10(j)</b> (Check if Applicable)	<input type="checkbox"/>	<b>*Place check mark in the 10(j) box in the charge action*</b>
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**Bargaining Status (Check One)**

Existing Contract	<input checked="" type="checkbox"/>	None	<input type="checkbox"/>
Seeking Initial Contract	<input type="checkbox"/>	Organizational Campaign	<input type="checkbox"/>
Seeking Successor Contract	<input type="checkbox"/>		

<b>No. of 8(a)(3) Discriminatees</b>		<b>*** Add Backpay Paragraph by checking the backpay box in the CP docketing template***</b>
<b>Number of 8(b)(2) Distriminatees</b>		
<b>Date Filed</b> (Action Disposition Date)	June 30, 2021	

<b>IA Category</b>	2	<b>Due</b>	9/15/21
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<b>Case Research</b>	CA-278005, 6/2/21, Bean, Same Er, diff CP CA-276345, 4/28/21, Bean, Same Er and Same CP CA-269488, 11/25/20, Bean, Diff Er address and Diff CP
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<b>Comments</b>	
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Section	(CA) Allegations	Apply	Section	(CB) Allegations	Apply
8(a)(1)	Coercive Actions (Surveillance, etc.)		8(b)(1)(A)	Coercion, incl'g Statements and Violence	
	Coercive Rules			Denial of Access	
	Coercive Statements (Threats, Promises of Benefits, etc.)			Discipline (including charges/fines)/Harassment	
	Concerted Activities (Retaliation, Discharge, Discipline)			Duty of Fair Representation, incl'g Superseniority, denial of access	
	Denial of Access			Hiring Halls	
	Discharge of Supervisor (Parker-Robb Chevrolet)			Picketing/Strike Actions	
	Interrogation (including Polling)			Rules: Coercive	
	Lawsuits			Union Dues and/or Membership Related (including excessing fees)	
	Weingarten				
			8(b)(1)(B)	Fund Contribution Related	
8(a)(2)	Assistance			Lawsuits	
	Domination			Other Allegations	
	Unlawful Recognition			Statements/Threats/Violence	
8(a)(3)	Changes in Terms and Conditions of Employment		8(b)(2)	Hiring Hall Related	
	Discharge (including Layoff and Refusal to Hire (not salting))			Lawsuits	
	Discipline			Union Security Related Actions	
	Lockout			Causing Employer to Discriminate/Retaliate	
	Refusal to Consider/Hire Applicant (salting only)				
	Refusal to Hire Majority		8(b)(3)	Failure to Sign Agreement	
	Refusal to Reinstate E'ee/Striker (e.g. Laidlaw)			Refusal to Bargain/Bad Faith or Surface Bargaining	
	Retaliatory Lawsuit			Refusal to Furnish Information	
	Shutdown or Relocate/Subcontract Unit Work			Repudiation/Modification of Contract	
	Union Security Related Actions				
			8(b)(4)(A)	Lawsuits/Grievances	
8(a)(4)	Changes in Terms and Conditions of Employment			Picketing/Handbilling	
	Discharge (including Layoff and Refusal to Hire)			Statements	
	Discipline				
	Refusal to Reinstate Employee/Striker		8(b)(4)(B)	Lawsuits/Grievances	
	Shutdown or Relocate/Subcontract Unit Work			Picketing/Handbilling	
				Statements	
8(a)(5)	Alter Ego				
	Failure to Sign Agreement		8(b)(4)(C)	Lawsuits/Grievances	
	Refusal to Bargain/Bad Faith Bargaining (Incl'g Surface Bargaining/direct dealing)			Picketing/Handbilling	
	Refusal to Furnish Information			Statements	
	Refusal to Recognize				
	Repudiation/Modification of Contract (Sec 8(d)/Unilateral Changes)	X	8(b)(4)(D)	All Allegations	
	Shutdown or Relocate (e.g. First National Maint.) Subcontract Work				
			8(b)(5)	All Allegations	
8(e)	All Allegations against an Employer				
			8(b)(6)	All Allegations	
			8(b)(7)(A)	All Allegations	
			8(b)(7)(B)	All Allegations	
			8(b)(7)(C)	All Allegations	
			8(e)	All Allegations against a Labor Organization	
			8(g)	All Allegations	



FORM NLRB-501  
(3-21)UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

07-CA-279243

Date Filed

6-30-2021

## INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

## 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Kellogg's Company		b. Tel. No. 6162474841
		c. Cell No. (b) (6), (b) (7)(C)
		f. Fax. No.
d. Address (Street, city, state, and ZIP code) 310-28th Street Se Grand Rapids, MI 49548	e. Employer Representative (b) (6), (b) (7)(C)	g. e-mail
		h. Number of workers employed 410
i. Type of Establishment (factory, mine, wholesaler, etc.) Bakery	j. Identify principal product or service Pop Tarts	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

## 2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Making unilateral changes to our past practices.

## 3. Full name of party filing charge (If labor organization, give full name, including local name and number)

BCTGM Local 70

## 4a. Address (Street and number, city, state, and ZIP code)

158-36th Street SE  
Grand Rapids MI 49548

## 4b. Tel. No.

6162437383

## 4c. Cell No.

6167178664

## 4d. Fax No.

6162435624

## 4e. e-mail

blocal70@aol.com

## 5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

BCTGM Workers International

## 6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Orin Holder

(signature of representative or person making charge)

(Print/type name and title or office, if any)

158-36th Street Se Grand Rapids MI 49548

Address

Date

6/30/2021

## Tel. No.

6162437383

## Office, if any, Cell No.

6167178664

## Fax No.

6162435624

## e-mail

blocal70@aol.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 05-200  
Detroit, MI 48226

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (313)226-3200  
Fax: (313)226-2090



Download  
NLRB  
Mobile App

June 30, 2021

(b) (6), (b) (7)(C)

Kellogg Company  
310 28th St SE  
Grand Rapids, MI 49548-1157

Re: Kellogg Company  
Case 07-CA-279243

Dear (b) (6), (b) (7)(C):

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Examiner Terrance Bean whose telephone number is (616)930-9159. The mailing address is 110 Michigan St NW Ste 299, Grand Rapids, MI 49503-2313. If this Board agent is not available, you may contact Resident Officer Colleen J. Carol whose telephone number is (616)930-9161.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board

agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Correspondence:** All documents submitted to the Region regarding your case MUST be filed through the Agency's website, [www.nlr.gov](http://www.nlr.gov). This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov) or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Terry Morgan". The signature is fluid and cursive, with the first name "Terry" and last name "Morgan" clearly distinguishable.

TERRY MORGAN  
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

cc: Jeffrey J. Canfield, Attorney  
Kellogg Company  
One Kellogg Square  
Battle Creek, MI 49017

Nicole M. Perry, Attorney  
Kellogg Company  
One Kellogg Square  
Battle Creek, MI 49017



## QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER  
07-CA-279243

## 1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

## 2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )

## 3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

## 4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

## 5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

## 6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

## 7A. PRINCIPAL LOCATION:

## 7B. BRANCH LOCATIONS:

## 8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES \_\_\_\_\_)

YES

NO

A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$ \_\_\_\_\_

B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ \_\_\_\_\_

C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ \_\_\_\_\_

D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_

E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_

F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_

G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_

H. Gross Revenues from all sales or performance of services (Check the largest amount)

☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.

I. Did you begin operations within the last 12 months? If yes, specify date: \_\_\_\_\_

## 10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

## 11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

## 12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

## PRIVACY ACT STATEMENT

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**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**KELLOGG COMPANY**

Charged Party

and

**LOCAL 70 BAKERY, CONFECTIONARY,  
TOBACCO WORKERS AND GRAIN MILLERS  
INTERNATIONAL UNION (BCGTM), AFL-CIO**

Charging Party

**Case 07-CA-279243**

**AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, state under oath that on June 30, 2021, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

**(b) (6), (b) (7)(C)**

Kellogg Company  
310 28th St SE  
Grand Rapids, MI 49548-1157

Jeffrey J. Canfield, Attorney  
Kellogg Company  
One Kellogg Square  
Battle Creek, MI 49017

Nicole M. Perry, Attorney  
Kellogg Company  
One Kellogg Square  
Battle Creek, MI 49017

June 30, 2021

\_\_\_\_\_  
Date

Rochelle Anderson,  
Designated Agent of NLRB

\_\_\_\_\_  
Name  
/s/

\_\_\_\_\_  
Signature



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 05-200  
Detroit, MI 48226

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (313)226-3200  
Fax: (313)226-2090



Download  
NLRB  
Mobile App

June 30, 2021

Orin Holder, Business Agent  
Local 70 Bakery, Confectionary, Tobacco Workers  
and Grain Millers International Union (BCGTM), AFL-CIO  
158 36th St SE  
Grand Rapids, MI 49548-2260

Re: Kellogg Company  
Case 07-CA-279243

Dear Mr. Holder:

The charge that you filed in this case on June 30, 2021 has been docketed as case number 07-CA-279243. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Examiner Terrance Bean whose telephone number is (616)930-9159. The mailing address is 110 Michigan St NW Ste 299, Grand Rapids, MI 49503-2313. If this Board agent is not available, you may contact Resident Officer Colleen J. Carol whose telephone number is (616)930-9161.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Terry Morgan". The signature is fluid and cursive, with the first name "Terry" and last name "Morgan" clearly distinguishable.

TERRY MORGAN  
Regional Director

**From:** [Bean, Terrance M.](#)  
**To:** [Orin Holder](#)  
**Subject:** NLRB Case No. 07-CA-279243, Kellogg Company  
**Date:** Friday, July 2, 2021 12:04:00 PM  
**Attachments:** [image001.png](#)

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Dear Mr. Holder –

I have been assigned to investigate the subject line mentioned case, which is based on a charge against the Employer that you filed with our Agency on June 30, 2021. I would like to schedule a time to speak with you (b) (6), (b) (7)(C)

. Feel free to contact me with any questions or concerns and I look forward to hearing from you soon.

Respectfully,



Terrance Bean  
Field Examiner  
National Labor Relations Board  
Region 7 – Resident Office

**Direct:** (616)930-9159

**Fax:** (616)456-2596

Gerald R. Ford Federal Building  
110 Michigan Street N.W. Suite 299  
Grand Rapids, Michigan 49503-2313

Follow us on Twitter:

[@NLRBGC/@NLRB](#)

En español:

[@NLRBG-Ces/@NLRBes](#)

Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)).



NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

Kellogg Company,

Charged Party,

and

Local 70, Bakery, Confectionary, Tobacco Workers and  
Grain Millers International Union (BCTGM), AFL-CIO.

Charging Party.

CASE 07-CA-279243

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

☐ GENERAL COUNSEL  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

Kellogg Company

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Keith Eastland

MAILING ADDRESS: Miller Johnson - 45 Ottawa Avenue SW, Suite 1100, Grand Rapids, MI 49503

E-MAIL ADDRESS: eastlandk@millerjohnson.com

OFFICE TELEPHONE NUMBER: 616.831.1749

CELL PHONE NUMBER: FAX: 616.988.1749

SIGNATURE:

(Please sign in ink.)

DATE: July 12, 2021

<sup>1</sup> IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

**From:** [Orin Holder](#)  
**To:** [Bean, Terrance M.](#)  
**Subject:** Re: NLRB Case No. 07-CA-279243, Kellogg Company  
**Date:** Thursday, July 8, 2021 1:15:02 PM  
**Attachments:** (b) (6), (b) (7)(C)  
[KELLOGG ULP MOA 2006.pdf](#)  
[image001.png](#)

---

Please see attached documents, I included a copy of an MOA from 2006 stating the reason(areas circled) for our position.

Sincerely,

Orin Holder  
Business Agent  
ph 616 243 7383  
fax 616 243 5624  
[Blocal70@aol.com](mailto:Blocal70@aol.com)

-----Original Message-----

From: Bean, Terrance M. <Terrance.Bean@nrlb.gov>  
To: Orin Holder <blocal70@aol.com>  
Sent: Thu, Jul 8, 2021 12:26 pm  
Subject: NLRB Case No. 07-CA-279243, Kellogg Company

Orin –

Thank you for speaking with me today. Please find attached (b) (6), (b) (7)(C)

please do not hesitate to contact me should you have any questions or concerns.

Respectfully,



Terrance Bean  
Field Examiner  
National Labor Relations Board  
Region 7 – Resident Office

**Direct:** (616)930-9159  
**Fax:** (616)456-2596

Gerald R. Ford Federal Building  
110 Michigan Street N.W. Suite 299  
Grand Rapids, Michigan 49503-2313

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Pursuant to Section 102.5 of the  
Board's Rules and Regulations,  
parties must submit all documentary  
evidence, including statements of

position, exhibits, sworn statements,  
and/or other evidence, by  
electronically submitting (E-Filing)  
them through the Agency's web site  
([www.nlr.gov](http://www.nlr.gov)).

**MEMORANDUM OF AGREEMENT  
BETWEEN  
KEEBLER COMPANY/GRAND RAPIDS BAKERY  
AND  
BCTGM LOCAL #70**

- Absentee "call ins" from employees must be received by the company one half (1/2) hour prior to employee's scheduled starting time or the employee will be recorded as "No Call/No Show". Calls for tardiness must be made no later than one (1) hour after employee's scheduled starting time or the employee will be recorded as "No Call/No Show". The company will consider extenuating circumstances if verification/proof on an employee's inability to phone timely is provided
- Employees with five or more years of service will be limited to scheduling only 10 days per year as vacation days. Employees with less than five years of service will be limited to scheduling only 5 days per year as vacation days.
- Employees who are assigned a job bid and who are "in training" will not be assigned "rate change" opportunities. Successful job applicants must stay on new job a minimum of six months after training/qualifying unless their seniority will not allow them to hold the shift/department. Employees will be allowed to sign up for and accept promotional job bids. If employees "in training" are laid off during progression period their training will be put on an eight week hold to allow them the opportunity to transfer back to the department/shift to continue their training. If employees on a "training hold" do not return back to their training program within eight weeks the job opportunity will be re-posted.
- No personal transfers will be allowed beginning the week of Memorial Day through the week of Labor Day. This change becomes effective for the layoff options that will be used for the week of July 10, 2006.

**The following overtime sign up changes are effective immediately:**

**Maintenance**

Third shift maintenance personnel interested in working over into first shift Saturday, will sign up for this opportunity on the week end overtime sheet that has a signing deadline of 8:00 AM Thursday.

Currently maintenance start up of 1 ½ hours Monday mornings are scheduled on the weekend overtime sheet with a Thursday 8:00 AM signing deadline. Monday morning pre-shift hours of four hour increments will be added to the weekend sign up sheet along with the 1 ½ hour start up opportunity and both will have the Thursday, 8:00 AM signing deadline.

*Jim* *SM*  
CDE 4-13-0  
WAC 4-15-0  
Gnd 4-13-0



### Operations

Third shift operations personnel interested in working over into first shift Saturday, will sign up for this opportunity as part of the weekend overtime arrangements and the deadline for signing up for this opportunity will be 8:00 AM Thursday.

Monday morning start up hours and/or Monday pre-shift hours for first shift will become part of the weekend overtime arrangements/scheduling and employee interested in these opportunities will have a sign up deadline of 8:00 AM Thursday.

*The Company will also standardize overtime sign up sheets for all departments so that they are alike in content/opportunities and institute the same signing deadlines.*

### The following obsolete classifications have been eliminated from CBA:

Pie Line Mixer  
Machine Operator "A" (Packing Light)  
Magazine Feeder (Packing Light)  
Machine Operator "B" (Packing Light)

### MAINTENANCE DEPARTMENT

- The company retains the right to not replace the Parts Person when he/she is on relief breaks and/or absent from work for two or less days. Management will offer the Parts Person holiday/weekend overtime opportunities if four or more crafts persons are working. If the Parts Person declines holiday/weekend overtime the Company retains the right to not replace the Parts Person during these times.
- The Company and Union agree to meet during the term of this agreement to update the Contractor/Vendor list to be reflective of current business practices.

### SANITATION DEPARTMENT

- The agreement to pay two Sanitors "painter pay" when outside painters are used is hereby rescinded with the understanding that the painter will be assigned painting work whenever painting contractors are in the plant and he/she is scheduled to work.

### PRODUCTION DEPARTMENT

- The company may hold employees over on a particular line out of seniority order for up to one hour in order to finish/meet customer orders. The line employees being required to stay over will be allowed to leave if a qualified employee volunteers to take their place with management's permission.

OK  
VFO  
JM  
CDP 4-13-06  
Sm  
WHL 4-13-06  
Quil 4-13-06

## MISCELLANEOUS

- When the Company performs vacation pay calculations, 40 hours will be used for lay off weeks.
- Daily overtime opportunities (voluntary and required) will be equalized up to eight hours per week. The following steps will be used to schedule daily overtime opportunities:
  - Daily overtime is offered by seniority and ability within the department/shift on a volunteer basis up to eight (8) hours per week. More than eight hours per week may be worked on a voluntary basis if other employees decline their option to work.
  - If there are not enough employees within the department/shift to fill daily overtime opportunities on a volunteer basis, management will assign open overtime segments to employees signing up on the "plant wide" overtime list in seniority/ability order.
  - If no volunteers are available in either the department/shift or on the plant wide overtime sheet, the company will assign overtime work to the least senior qualified employee(s) from the respective department/shift.
  - No employee will be required to work more than twelve (12) hours per day or scheduled to work more than eight (8) hours of required overtime per week until the entire department/shift seniority roster has worked either eight hours of volunteer overtime work or eight hours of required overtime work.
  - If all department/shift employees have worked either eight hours of volunteer or required overtime and a need for daily overtime still exists that can not be filled on a plant wide basis, the remaining overtime openings will be filled by assigning the least senior qualified employee from the affected department/shift.
  - The overtime equalization agreement for volunteer and required overtime does not apply for weekend and holiday overtime segments.
- The Company will pay Local #70 officers who are Kellogg employees eight hours pay at straight time for each day of attendance/participation at the annual Kellogg's Union Steward Training.
- An employee will be exempt from a required daily overtime segment to attend a doctor's visit providing the visit has been scheduled at least a week in advance, management was made aware of the pending scheduled visit and proof was provided. Emergency visits to a doctor and/or dentist will be considered if verifiable.
- The Company will issue five uniforms per year to all employees and allow up to four additional uniforms to be purchased at 50% of the company's cost beginning November 1, 2006. The calendar year for ordering new uniforms will continue to be as in the past, November 1 through October 31. Employees may substitute one of their uniform sets for a raincoat and/or insulated jacket. Company will explore the possibility of offering coveralls in place of a uniform set(s) or by offering an employee purchase option similar to the work shoes program. The Company will investigate adding the BCTGM Local #70 to the uniform silk screened artwork.

*Handwritten signatures and initials:*  
CDP 4-13-06  
WAG 4-13-06  
SM 4-13-06

The above language constitutes our agreement of selected local negotiation proposals as of Thursday, April 13, 2006. Other local negotiation proposals remain open for further discussion. The parties listed have shown their acceptance of this memorandum of agreement by signing below:

Kurt J. Freiburger 4-13-06  
Kurt J. Freiburger Date  
Human Resources Manager  
Kellogg Company

Orin Holder APR 11, 06  
Orin Holder Date  
Business Agent, BCTGM #70

Walt Lentz 4-13-06  
Walt Lentz Date  
General Plant Manager  
Kellogg Company

Bill Arends 4-13-06  
Bill Arends Date  
President, BCTGM #70

Theresa Mullins 4-13-06  
Theresa Mullins Date  
Employee Relations Manager  
Kellogg Company

Mark Heintzelman 4-13-06  
Mark Heintzelman Date  
Chief Steward, BCTGM #70

Chris Prochaska 4-13-06  
Chris Prochaska Date  
Plant Technical Manager  
Kellogg Company

Steve Meade 4-18-06  
Steve Meade Date  
Plant Operations Manager  
Kellogg Company



**From:** [Bean, Terrance M.](#)  
**To:** [Canfield, Jeffrey](#); [Perry, Nicole](#)  
**Subject:** NLRB Case No. 07-CA-279243, Kellogg Company  
**Date:** Friday, July 9, 2021 9:45:00 AM  
**Attachments:** [LTR.07-CA-279243.Request Evidence-No Prior Contact.pdf](#)  
[image001.png](#)

---

Dear Mr. Canfield, Ms. Perry –

Please find attached the request for evidence letter for the subject line mentioned case. Please do not hesitate to contact me should you have any questions or concerns.

Respectfully,



Terrance Bean  
Field Examiner  
National Labor Relations Board  
Region 7 – Resident Office

**Direct:** (616)930-9159  
**Fax:** (616)456-2596

Gerald R. Ford Federal Building  
110 Michigan Street N.W. Suite 299  
Grand Rapids, Michigan 49503-2313

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Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)).





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 7  
110 Michigan St NW Ste 299  
Grand Rapids, MI 49503-2313

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (616)456-2679  
Fax: (616)456-2596

Agent's Direct Dial: (616)930-9159

July 9, 2021

Jeffrey J. Canfield, Attorney  
Kellogg Company  
One Kellogg Square  
Battle Creek, MI 49017

Nicole M. Perry, Attorney  
Kellogg Company  
One Kellogg Square  
Battle Creek, MI 49017

Re: Kellogg Company  
Case 07-CA-279243

Dear Mr. Canfield, Ms. Perry:

I have been assigned to investigate the above-captioned case, which is based on a charge filed by Local 70, Bakery, Confectionary, Tobacco Workers and Grain Millers International Union (BCGTM), AFL-CIO, on June 30, 2021. I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before July 23, 2021 with regard to certain allegations in this case. In order to allow the Region to fully weigh all the facts in this case and to allow all parties an opportunity to present their views and evidence, a response setting forth the Employer's position is strongly encouraged. Region 7 seeks to avoid any unnecessary litigation, which can often be achieved when the full facts are available for review. Accordingly, your full and complete cooperation in this investigation is requested.

**Allegations:** The allegations for which I am seeking your evidence are as follows.

1) Within the previous six months, and continuing to date, the Employer has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective bargaining representative of its employees by, *inter alia*, making unilateral changes to its past practices without first providing notice or an opportunity to bargain with the Union, in violation of Section 8(a)(5) of the Act.

**Board Affidavits:** I am requesting to take affidavits from any individual(s) you believe have information relevant to the investigation of the above-captioned matter. Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my taking sworn statements from them,

constitutes less than complete cooperation in the investigation of the charge. Please contact me by July 16, 2021 to schedule these affidavits.

**Documents:** Please provide the following documents, along with any and all other evidence you deem to be relevant to the case:

1. A completed NLRB Questionnaire on Commerce containing the correct legal name and commerce facts for the Employer involved in this case.
2. Please provide a detailed response to the charge allegation, including a full and complete written account of the facts, and any documentary evidence to support your position. Include with your submission, any and all written communications, including texts, notes and contemporaneous e-mails between supervisors and members of management regarding the decision to alter the way in which mandatory weekend work hours are assigned to employees.
3. Does the Company maintain written polling procedures with respect to volunteering/assigning weekend work hours? If so, has the policy been consistently enforced and/or implemented? Please provide copies of such policies, along with any other policy or policies applicable to the charge allegations, which are set forth in more detail below. Additionally, please provide a copy of the current collective bargaining agreement and any and all memoranda-of-understanding attached thereto.
4. The Charging Party Union alleges that for many years, there has been a polling procedure in place whereby employees who wish to work on Saturday and Sunday, could sign up to do so on a voluntary basis up to 8:00 a.m. on Thursday morning of that same week. If there were not sufficient volunteers to adequately cover production requirements for the weekend by Thursday morning, the Employer is permitted to require a certain number of employees to work on Saturday and Sunday based on seniority and qualifications. The Union alleges that recently, however, the Employer chose to unilaterally change that practice and began to require employees to work on the weekend beginning on Wednesday, instead of Thursday, which the Union contends has been the long-standing past practice. The union believes this is an unlawful unilateral change to its past practice in violation of the Act. Please describe in detail what the policy and/or procedures are for having employees work on the weekend, and whether the Employer recently changed anything about those policies/procedures. Please provide any documentary evidence to support your position.

**Date for Submitting Evidence:** To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by no later than noon on Friday, July 30, 2021. If you are willing to allow me to take affidavits, please contact me by July 16, 2021 to schedule a time to take affidavits. Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them

through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted.

Please contact me at your earliest convenience by telephone, (616)930-9159, or e-mail, [terrance.bean@nlrb.gov](mailto:terrance.bean@nlrb.gov), so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

*Terrance Bean*

Terrance Bean  
Field Examiner

**From:** [Bean, Terrance M.](#)  
**To:** [Eastland, Keith E.](#)  
**Subject:** RE: NLRB Case No. 07-CA-279243/ Kellogg Company  
**Date:** Monday, July 26, 2021 11:39:00 AM  
**Attachments:** [image001.png](#)

---

Good afternoon Keith –

August 6 is fine. Let me know if you need anything else!

Thanks,

Terrance

---

**From:** Eastland, Keith E. <eastlandk@millerjohnson.com>  
**Sent:** Wednesday, July 21, 2021 8:04 AM  
**To:** Bean, Terrance M. <Terrance.Bean@nlrb.gov>  
**Subject:** NLRB Case No. 07-CA-279243/ Kellogg Company

Terrance: I hope you are doing well. As you know Miller Johnson is representing Kellogg in the charge above. I've been out for a few days on vacation and returning later this week. Would it be possible to have a one-week extension in submitting the company's position statement? The current date in your request for evidence letter is July 30. Could we have through August 6?

Thanks,  
Keith

**Keith E. Eastland**

Attorney at Law

**Miller Johnson**

45 Ottawa Ave. SW, Suite 1100, Grand Rapids MI 49503

O: 616.831.1749 | [eastlandk@millerjohnson.com](mailto:eastlandk@millerjohnson.com) | [vcard](#)







45 Ottawa Avenue SW  
Suite 1100  
P.O. Box 306  
Grand Rapids, MI 49501-0306



**KEITH E. EASTLAND**  
Attorney at Law

616.831.1749  
616.988.1749 fax  
eastlandk@millerjohnson.com

August 6, 2021

**VIA EMAIL & E-FILING**

Terrance Bean  
Field Examiner  
National Labor Relations Board, Region 7  
110 Michigan St NW, Suite 299  
Grand Rapids, MI 49503-2313

Re: Kellogg Company  
Case 07-CA-279243

Dear Mr. Bean:

Our firm represents Kellogg Company ("Kellogg" or the "Company") in the above-referenced case. This is Kellogg's initial position statement addressing the charge allegations as described in your July 9, 2021 letter.<sup>1</sup>

**Charge Allegations and Summary of Kellogg's Position**

The BCTGM Local 70 (the "Union") filed the above-referenced Charge on June 30, 2021. The Union alleges that Kellogg violated Section 8(a)(5) of the Act by making "unilateral changes" to a weekend overtime polling procedure. More specifically, the Union alleges:

[F]or many years, there has been a polling procedure in place whereby employees who wish to work on Saturday and Sunday, could sign up to do so on a voluntary basis up to 8:00 a.m. on Thursday morning of that same week. If there were not sufficient volunteers to adequately cover production requirements for the weekend by Thursday morning, the Employer is permitted to require a certain number of employees to work on Saturday and Sunday based on seniority and qualifications. The Union alleges that recently, however, [Kellogg] chose to unilaterally change that

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<sup>1</sup> The information provided in and with this letter is confidential. Kellogg provides it solely for use in your investigation. Neither this letter nor the materials included may be provided to any other person or agency or be used for any purpose other than the investigation into the allegations. Moreover, because this information is submitted for the sole purpose of promptly and informally resolving the charge, this letter is not admissible for any purpose, including impeachment, in any judicial or quasi-judicial proceeding. The statements in this letter are based on our understanding of the allegations and information known to Kellogg at this time.

practice and began to require employees to work on the weekend beginning on Wednesday, instead of Thursday, which the Union contends has been the long-standing past practice.

These allegations have no factual or legal merit and the Region should dismiss the Charge with prejudice.

As an initial matter, the existing polling procedure in place at the Grand Rapids bakery is not a negotiated contractual term or a binding past practice. But even if the Union could prove otherwise, there has been no “change” in the polling procedure for determining volunteers for weekend work or in the time when weekend work assignments become established for plant employees as alleged by Local 70.

Kellogg did recently begin to provide additional notice of employees who will be required to work on Saturday or Sunday if there are insufficient volunteers at the end of the polling process. Kellogg now posts that list on Wednesday of each week. This earlier/advance notice to individuals on tap to work on the upcoming weekend absent additional volunteers, however, does not change the volunteer polling process or the time when weekend assignments are final. The Union’s allegation that Kellogg “began to require employees to work on the weekend beginning on Wednesday, instead of Thursday” is not accurate. The deadline for volunteers to sign up remains the same and the schedule still only becomes final after that deadline. Moreover, this earlier notice directly benefits employees. It allows them more time to urge coworkers to volunteer if they prefer to avoid weekend work.

The entire point of the polling process in question is to establish a deadline after which the Company’s schedulers shift their scheduling from volunteers to mandatory draftees as they fill out their staffing lists for the weekend. In this, there has been no change. Kellogg continues to allow bargaining unit employees to volunteer for weekend overtime up until 8:00 a.m. on Thursday of each week, by putting their name on a weekly sign-up sheet. Kellogg also continues to determine the final list of employees directed to work on Saturday and Sunday after the time for volunteering closes at 8:00 a.m. on Thursday morning. Said differently, Kellogg did not change how or when it permits employees to volunteer for weekend overtime. Nor did the Company alter when the weekend assignments become fixed and final.

Providing additional information to employees sooner is not a change in the polling procedure for weekend work, and such communication is protected by Section 8(c). It cannot be a violation of Section 8(a)(5) because it is not a change in wages, benefits, or working conditions, let alone a material and substantial one.

### **Factual Background**

Kellogg and the Union have a longstanding bargaining relationship. The parties' most recent collective bargaining agreement expired on April 30, 2021. (**Attachment A.**) The parties are currently engaged in bargaining for a new CBA. Nothing in the expired CBA requires Kellogg to apply a particular polling procedure for using volunteers or scheduling weekend work. In fact, the overtime equalizations that the parties negotiated in the CBA expressly "do not apply for weekend and holiday overtime segments." (*Id.* at Section 7.3.) Scheduling, absent a specific negotiated contract term, falls within Kellogg "right to manage the plant and direct the working force." (*Id.* at Section 4.1.)

The Union has identified a 2002 Memorandum of Agreement (MOA) in support of its position on the weekend polling process. (**Attachment B.**) That MOA was not carried forward into the most recent collective bargaining agreement, but it does spell out a general process for assigning weekend overtime. According to the long-expired MOA:

- Employees have until 8:00 a.m. Thursday to sign up for or delete their names from the weekend overtime volunteer list.
- Kellogg will post job assignments for weekend overtime "by 1:00 p.m. on Thursday." Employees on the job assignment listed posted at this time are expected to work their scheduled weekend shifts.
- Once the list is posted, employees who volunteer for, but are not assigned, weekend overtime (i.e. there were more volunteers than job assignments) can remove their name from the volunteer list prior to Friday at 8:00 a.m. If they do not do so, they will be required to work weekend overtime if additional needs arise.

There is nothing in the MOA identified by the Union which restricts – or even mentions – the issue of when the Company begin to make the sign up available. Indeed, Kellogg has changed the weekend overtime process from time to time unilaterally without objections in the past, such as during holiday weeks. More recently, the Company has followed a process tracking the points above—where volunteer lists are open though 8:00 a.m. on Thursday and with final assignments coming after that deadline based on the number of volunteers.

As explained above that polling process hasn't changed. Kellogg continues to allow employees to sign the weekend overtime volunteer list until 8:00 a.m. on Thursday of each week. Kellogg also continues to post the final job assignments for weekend overtime after the time to volunteer for weekend overtime has closed "by 1:00 p.m. on Thursday." The only recent factual difference is Kellogg's decision to give earlier notice of which employees will be required

after the overtime polling process is completed if there are no additional volunteers by the deadline. But this is not a change in how volunteers and final assignments for weekend work are determined. Moreover, the additional information directly benefits to the bargaining unit employees. It gives them more time to know when they are on deck for weekend work, and if so, they can solicit more coworkers to volunteer before their weekend overtime assignment becomes final and required.<sup>2</sup>

### **Discussion**

#### **1. Kellogg Has Not Changed Its Practice on Weekend Overtime.**

Nothing in the current CBA requires Kellogg to follow any particular procedure for weekend work and the Union cannot prove a binding past practice. But even if it could, the Regions should dismiss the Charge because Kellogg has not “changed” the polling practice for assigning weekend overtime as alleged by the Union. Your July 9 letter indicates that the Union claims that Kellogg “began to require employees to work on the weekend beginning on Wednesday, instead of Thursday.” That claim is not accurate. Regardless of how employees or the union may characterize the advance notice, the reality is that employees are not finally mandated to work a weekend assignment until after the unchanged polling process is completed and after the Company accounts for all volunteers who sign up by the Thursday 8:00 a.m. deadline. Kellogg is merely informing employees on Wednesday so that they will have earlier notice of weekend assignments—giving them more opportunity to find additional volunteers.

Employers have the statutory right to communicate such facts and information under Section 8(c) of the Act, and nothing about this additional notice modifies the procedure or timing for when employees may actually sign up to volunteer or when the weekend schedule is actually finalized. Kellogg has made no change in any wages, benefits, or working conditions for unit employees.

#### **2. Any Alleged Change Would Also Not Be “Material, Substantial, or Significant,” Sufficient to Trigger a Bargaining Obligation.**

Lastly, even if Kellogg’s decision to provide additional information to unit employees could be considered a material change in a term of employment under Section 8(d) of the Act and it was not protected by Section 8(c), Kellogg would still have no obligation to bargain with the Union prior to making this alleged change. An employer has a duty to bargain over a change to bargaining unit employees’ terms and conditions of employment only where the change is “material, substantial, and significant.” See, e.g., *United Technologies Corp.*, 278 NLRB 306,

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<sup>2</sup> Employees listed on the earlier notice will report to work as reflected on the weekend schedule unless they are notified of a change after the volunteer list deadline on Thursday morning and after schedule are finalized. Again, this is merely advance notice; the list of employees required to work on Saturday or Sunday does not become final until after Thursday. The Union’s allegations overlook this important fact.



MILLER JOHNSON

Terrance Bean  
August 6, 2021  
Page 5

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308 (1986) (“[I]n order for a statutory bargaining obligation to arise with respect to a particular change implemented by an employer, such change must be a ‘material, substantial, and a significant’ one affecting the terms and conditions of employment of bargaining unit employees.”)

Here, any alleged change cannot be considered material, substantial, or significant. The “material” or “substance” of the polling procedure is the demarcation for determining weekend volunteers versus draftees. Nothing has changed on this account. Employees still have the opportunity to sign up for overtime until 8:00 a.m. on Thursday and the weekend overtime assignments are still not finalized until after 8:00 a.m. on Thursday, exactly as set forth in the 2002 MOA identified by the Union as representing the alleged practice. As such, there can be no violation here. *See, e.g., Litton Systems*, 300 NLRB 324, 331-32 (1990) (finding no material change where the employer unilaterally installed a central buzzer system for employee breaks, replacing the practice of employees taking breaks in accordance with various unsynchronized clocks because “[t]he official time allotted for the breaks has not changed”).

### Conclusion

For the reasons above, the Region should dismiss the Charge. Please contact me if you have any questions. Although we do not believe witness affidavits should be necessary in this straight-forward case, Kellogg is open to considering making HR personnel from the bakery available.

Sincerely,

MILLER JOHNSON

By   
Keith E. Eastland

KEE: (b) (6), (b) (7)(C)  
Attachments

# **Attachment A**

**AGREEMENT**

**between**

**KEEBLER FOODS COMPANY**  
**GRAND RAPIDS, MICHIGAN**  
**BAKERY**

**and**

**BAKERY, CONFECTIONERY,**  
**TOBACCO WORKERS**  
**AND GRAIN MILLERS**  
**INTERNATIONAL UNION**  
**AFL-CIO-CLC, LOCAL NO. 70**

**EFFECTIVE:**  
**MAY 1, 2017 THROUGH**  
**APRIL 30, 2020**

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# **AGREEMENT**

THIS AGREEMENT made and entered into this 1<sup>st</sup> day of May 2017 between the KEEBLER COMPANY, GRAND RAPIDS, MICHIGAN BAKERY, its successors and assigns hereinafter designated as "Company" and BAKERY, CONFECTIONERY, TOBACCO WORKERS' AND GRAIN MILLERS INTERNATIONAL UNION, AFL-CIO-CLC, LOCAL NO. 70, Grand Rapids, Michigan, hereinafter referred to as the "Union."

## **ARTICLE 1 – RECOGNITION**

Pursuant to certification of the Bakery and Confectionery Workers' International Union of America, AFL-CIO, by the National Labor Relations Board on November 18, 1968, as the exclusive representative of the employees of the Company in the unit described below, the Company recognizes the Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union, AFL-CIO-CLC, Local No. 70 as the sole bargaining agent for all production, bake shop and maintenance employees, including sanitation employees, packing employees, shipping and receiving employees employed at the Company's installation located at 310 - 28th Street, S.E., Grand Rapids, Michigan, but excluding all sales representatives, office clerical employees, technical employees and supervisors as defined in the Act.

## **ARTICLE 2 – PURPOSES OF AGREEMENT**

The principal purposes of this Agreement are:

- a. To secure industrial peace and efficiency enabling the Company and employees to provide, as far as economic conditions may permit, security and continuity of employment.
- b. To set forth terms and conditions of employment to be observed by the parties hereto.
- c. Through the observation of this Agreement to avoid grievances or disputes and, if such grievances or disputes occur, to settle them in a peaceful manner without resort to any kind of interference with production or interruption of employment relationships.

## **ARTICLE 3 – RESPONSIBILITY**

### **3.1 Cooperation**

The Union agrees that all employees covered by this Agreement shall work peacefully and cooperate with all other employees to the best interests of the Company and it is understood that it is not the intention of this Agreement that the Union shall operate in such a manner as to obstruct the orderly process of management. Nothing herein shall permit Union or any of its members to assume that they have authority to officiate in a managerial or supervisory capacity.

### **3.2 No Lockout/No Strike**

There shall be no lockout of employees by the Company and there shall be no strike or stoppage of work or other interference with production by Union or its members during the period of this contract so long as the terms of this Agreement are observed and performed in good faith by the respective parties.

## **ARTICLE 4 – EMPLOYMENT AND UNION MEMBERSHIP**

### **4.1 Management Rights**

Company retains the right to manage the plant and direct the working force, including the right to hire, suspend or layoff employees because of lack of work or to discharge any employee who is dishonest, negligent, incompetent, intoxicated while on duty, or of immoral character, or who refuses to perform any service or labor as set forth in the classifications of labor in this contract when required to do so by Company, provided, however, that:

### **4.2 Union Membership/Check Off Authorization**

During the entire term of this agreement, the Company agrees to check off monthly union dues, the initiation fee of the Union and P.A.C. for each employee-member of the Union upon submission to the Company by the Union of voluntary check off authorization agreements signed individually by employee members of the Union authorizing the Company to make such deductions from the pay of the members of the Union, it being understood that members of the union signing such agreements may at any time voluntarily revoke such agreement and authorization by giving both the Company and the Union written notice thereof.

All such wage assignments shall be revocable in accordance with applicable State and Federal laws.

## **ARTICLE 5 – NEW EMPLOYEES**

### **5.1 Probation Period**

All newly-hired employees shall have a trial period of not more than thirty (30) days.

Upon written notification by the Company to the Local Union prior to the expiration date of the first thirty (30) days of any new employee's employment, the probationary period of such new employee may be extended by mutual agreement for a maximum of two (2) additional thirty (30) day periods.

### **5.2 New Employees Pay Rate (effective for employees hired prior to December 31, 2017)**

New unskilled employees shall be hired at the prescribed starting rate and shall be advanced as set forth herein. If, during the first year of employment, an employee is permanently placed on a job in a higher classification, he or she shall not receive the rate of such classification until completion of one (1) year of employment with the Company.

When employees, who have completed the prescribed starting rate progression for new employees, are assigned to a job in a higher classification as trainees they shall receive ten cents (10¢) below the higher classified rate or their old rate, whichever is higher, for a period of two hundred (200) hours of work subject to an extension of two hundred (200) hours of work, if necessary in the opinion of the Company, at which time they shall be advanced to the rate of the higher classification provided they have proven their ability to do the job.

If an employee permanently assigned to a higher classification already has filled the work requirements, as set forth above, on that job on a temporary status such employee shall immediately receive the higher rate, provided he or she is not a new employee in the starting rate progression period.

### **5.3 New Employees' Vacation**

New employees will not be eligible for vacation or vacation pay during the same calendar year in which they are hired until 1-01-18 at which time they will follow the transitional schedule.

### **5.4 Seniority Status**

No employee shall acquire a seniority status until such employee has worked for Company for a period of thirty (30) days but if such employee shall be retained after working for Company for thirty (30) days, seniority shall relate to the date of employment.



## **5.6 Transitional Employees as of January 1, 2018**

### **REGULAR FULL-TIME TRANSITIONAL EMPLOYEES**

A designation of employee known as a "Regular Full Time Transitional Employee" is hereby established and hereinafter referred to as a "Transitional Employee". The Parties define a Transitional Employee as one that may, through the process set forth in this Section, transition to the Regular Full Time Upgraded Employee designation.

The Parties define "Regular Full Time Employee" as an employee employed in the BCTGM bargaining unit of the Local Union as of the Effective Date of this 2017 contract. The Parties define "Regular Full Time Upgraded Employee" as an employee hired as a Transitional employee who has upgraded to Regular Full Time Employee status through the procedure set forth in this section.

### **Core Numbers**

The Grand Rapids plant will have a "Core Number" used in determining its usage of Transitional Regular Employees. The core number is defined as the total full time employee population at any given time. Upon the effective date of this agreement and annually thereafter, a core number shall be identified by the company, based on annual production budgets for the next 12 months, and communicated to the union. The union will have an opportunity annually to review and discuss the number established by the Company.

### **Transitional Employee Percentage Caps**

The Company is entitled to hire transitional employees up to 25% of the Core Number established above, and to be phased in during the term of this agreement. Current core number is 402, 2018 10%, 2019 15%, 2020 25% Transitional employees may join the Union upon completion of their 30-day probationary period. With Section 4.2 and Article 27 applying.

### **Transitional Employee Upgrade into the Regular Employee Designation**

Whenever the number of Transitional Employees exceeds the percentages outlined above of the Total Regular Full Time Employees, as many transitional employees as necessary will be moved to regular full time status in order to reestablish the Transitional Employee population to no more than the agreed upon percentages of the Regular Full Time Employee population. Upgrade of Transitional Employee(s) will be done by plant wide seniority.

Transitional employees will be upgraded to regular full time status as quickly as internal contractual processes permit.

### **Transitional Employee Wages, Benefits and other Terms of Employment**

Transitional Employees shall be paid a straight time rate of \$16.00. Upon upgrade to Regular Full Time Employee status, a Transitional Employee will be entitled to the classified rate assigned to Regular employees for the applicable position. They shall also be subject to increases, lump sums, and/or Any incentive programs that may be due to Regular Full Time Employees during term.

### **Transitional New Hires to Mechanical Department**

Employees hired into positions in the Mechanical Department after January 1, 2018 will receive the wage rate associated with their Mechanical position as set forth in this Agreement, and shall be eligible for overtime rate on the same basis as Transitional Full Time Employees. However, such employees will receive the benefit package (health, 401(K), Vacation, Holiday) available to Transitional Employees.

### **Holidays, Vacation, Healthcare and Savings and Investment (S&I)**

Transitional Employees shall receive vacations based on their length of continuous service with the Company in conformance with the following schedule:

Length of Continuous Service Duration of Vacation

- Twelve Months to Two Years - One Week
- Two Years to Five Years - Two Weeks
- After five (5) years - Three Weeks
- After twelve (12) years – Four Weeks

Upon graduation to Regular Employee status and thereafter, a Transitional Employee will retain the amount of vacation set forth in this section.

Transitional Employees shall be entitled to only the following holidays as paid holidays:

- New Year's Day,
- Memorial Day,
- Good Friday,
- Independence Day,
- Labor Day,
- Thanksgiving Day,
- Day After Thanksgiving,
- Christmas Eve,
- Christmas Day,
- New Year's Eve.

Transitional Employees must satisfy the same eligibility requirements for holiday pay as Regular Employees. If a transitional employee works on President's Day or the Monday after Easter, they will be paid time and one half for time worked. If a transitional employee does not work on either of these days they will be off the holiday with no pay.

When a Transitional employee moves into a Regular Full-Time classification he or she will have his or her terms and conditions increased to those that cover employees within the Regular Full-Time Classifications, except for the following benefits:

Healthcare, savings and investment, holidays, vacation amounts and overtime, which will be as set forth in this Section.

### **Health Care Benefits**

Transitional Employees shall be entitled to elect an 80/20 coinsurance PPO, HSA A, or HSA B insurance plan as outlined in Exhibit A.

Co-Premiums effective 1/1/18 10% of total cost each year

80/20 PPO = \$38.06/wk 1<sup>st</sup> year, 10% total cost 2<sup>nd</sup> year, 10% total cost 3<sup>rd</sup> year.

### **Savings and Investment**

Transitional Employees will be entitled to Kellogg 401K plan as outlined in Exhibit B; this entitlement will continue after upgrade to Regular Full Time Employees. Transitional Employees will not be entitled to any pension benefits either before or after upgrade to Regular Full Time Status.

### **Overtime Pay**

Transitional Employees shall be eligible for time and a half after 40 hours worked; once employee upgrades to regular full time, they will be eligible for double time on Sunday.

### **Transitional Employee Seniority and Usage**

A Transitional Employee has plant wide seniority based on his/her date of hire for lay off purposes and for moving to Regular Full Time position status. A Transitional Employee will have a set shift and schedule and will report daily to the Scheduler for their daily assignments. A Transitional Employee may be used in any Department under terms as outlined herein. Transitional Employees shall not be scheduled less hours based on their designation than other employees at the Plant.

Transitional Employees may have their shift schedules changed by transfer, with the same notice as required to be given to Regular Employees.

At no time can a Regular Full-Time Employee be forcibly laid off and still maintain any Regular Full-Time Transitional Employees at the plant.

At no time can a Regular Full-Time Employee be moved back to Transitional Status.

### **No Other Benefits**

There will be no other benefit or benefit package extended to Transitional Employees except those set forth in this Section.

## **ARTICLE 6 – MANNING, MACHINERY OR WORKLOAD CHANGES**

### **6.1 Manning Levels**

1. When the Company plans changes, including changes in machine speeds on existing production lines which affect employee workloads or manning levels, said changes shall be communicated to the local Union Business Agent, or the proper local Official prior to implementing such changes sufficiently in advance (not less than two (2) calendar weeks) and in sufficient detail to allow the local Union to investigate and study the changes.

2. Should the local Union deem it necessary, the Company and the local Union will meet to attempt to resolve any disputes.

3. If the disputes are not resolved, after expiration of the time period specified in paragraph (1) above has elapsed, the Company may implement the changes for a reasonable trial period so that both the local Union and the Company may fairly evaluate the changes.

4. If after such trial period the Union contends the changes cause unfair or unreasonable employee workloads, the Company shall immediately restore the manning level, machine speeds, and/or employee workloads that were in effect prior to implementing the disputed changes until an agreement is reached between the local Union and the Company or an award is rendered by an arbitrator in accordance with the provisions of paragraph (5) below.

5. The Company may at the time of notice to the local Union submit the issue to an impartial arbitrator, by serving notice of intent to arbitrate upon the local Union. Simultaneously with the serving of such notice, the Company shall also request a panel of nine (9) arbitrators from the Federal Mediation and Conciliation Service which shall be submitted to the local Union and the Company. This panel shall be a national "Blue Ribbon Panel" consisting of nine (9) arbitrators who are experienced in work measurements and methods. The arbitrator shall be selected from

said panel by mutual consent of the parties but in the event there is no such mutual consent within ten (10) days after receipt of the panel, the parties shall each alternately strike four (4) names, within one (1) week. The remaining name shall be designated to hear and determine the matter. Such determination shall be binding on both parties. It is further understood by the Company and the local Union that all the above steps taken and the scheduling of the arbitration shall be expedited.

It is understood that the above arbitrator selection procedure shall not apply to or change any other arbitration selection method elsewhere in this Agreement.

## **6.2 New Machinery/Technology**

When any new machinery or technology is introduced into the bakery, that displaces workers from their jobs or requires changes in production practices or work methods such workers, unless separated from employment, shall suffer no reduction in pay provided they have at least three (3) years of seniority. No less than sixty (60) days of advance notice of such changes shall be given. However, such employees must exercise their seniority in order to accept promotions as they occur up to and including the rate they are being paid. A refusal to accept a promotion within this range will forfeit the rate they are receiving and thereafter they will be paid the rate of the job to which they have been assigned. This shall not require an employee to change shifts.

The employer agrees to meet in an attempt to resolve any issues resulting from the above changes.

The employer further agrees to provide reasonable and appropriate training necessary to perform bargaining unit work on new equipment, including any newly created unit jobs, or to perform other work to which they might be reassigned or transferred. The employer further agrees to discuss with the union the design and delivery of training programs.

If a new machine is introduced into the bakery which replaces an existing machine and which materially increases the workload or job responsibility of the employee working on such machine over their workload or responsibility on the machine such new machine replaces, the Union shall have the right to discuss the possibility of an increase in rate for such workers involved with the Company. If no agreement can be reached, the matter can be referred by the Union to the President of Keebler Company and the Chairman of the Keebler Company Division of the Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union, AFL-CIO-CLC, for final disposition. The Keebler Company does not guarantee to agree to any increase in rate.

## **6.3 New Jobs**

The rate of any new job created during the term of the contract will be established by negotiations between the Company and the Union.



## **ARTICLE 7 – WORKING TIME AND OVERTIME PAY**

### **7.1 Workweek and Overtime**

The workweek for all employees covered hereunder shall begin on Monday. Forty (40) hours shall constitute a workweek. Overtime worked over forty (40) hours in any one (1) week, eight (8) hours in any one (1) day or pre-shift hours worked before the employees regularly scheduled shift shall be paid for at the rate of time and one-half (1½). Overtime shall not be paid on the day and then on the week. There shall be no pyramiding of overtime.

### **7.2 Saturday Work**

Overtime at the rate of time and one-half (1½) the particular employee's rate of pay shall be paid to all such employees for all work performed on Saturday, regardless of the number of hours worked during the five (5) previous work shifts of the week if the failure to work the normal workweek hours during such previous work shift of the week by any employee was due to failure of the Company to provide the normal hours of work, or due to an absence of the employee with approval of the Company. Daily overtime hours where applicable shall not be included in establishing eligibility for overtime on Saturday.

### **7.3 Equalized Overtime**

Daily overtime opportunities (voluntary and required) will be equalized up to eight hours per week. The following steps will be used to schedule daily overtime opportunities:

- Daily overtime is offered by seniority and ability within the department/shift on a volunteer basis up to eight (8) hours per week. More than eight hours per week may be worked on a voluntary basis if other employees decline their option to work.
- If there are not enough employees within the department/shift to fill daily overtime opportunities on a volunteer basis, management will assign open overtime segments to employees signing up on the "plant wide" overtime list in seniority/ability order.
- If no volunteers are available in either the department/shift or on the plant wide overtime sheet, the company will assign overtime work to the least senior qualified employee(s) from the respective department/shift.
- No employee will be required to work more than twelve (12) hours per day or scheduled to work more than eight (8) hours of required overtime per week until the entire department/shift seniority roster has worked either eight hours of volunteer overtime work or eight hours of required overtime work.
- If all department/shift employees have worked either eight hours of volunteer or required overtime and a need for daily overtime still exists that cannot be filled on a plant wide basis, the remaining overtime openings will be filled by assigning the least senior qualified employee from the affected department/shift.
- Employees who are not scheduled on a shift will not be required into the plant for a four (4) hour vacancy unless there is no other option to fill the vacancy by following the normal polling procedures.
- The overtime equalization agreement for volunteer and required overtime does not apply for weekend and holiday overtime segments.

### **7.4 Bakery Overtime**

Overtime shall be distributed among the employees according to seniority within each shift, provided they have proven their ability to do the job. The company may hold employees over on a particular line out of seniority order for up to one hour in order to finish/meet customer orders.

The line employees being required to stay over will be allowed to leave if a qualified employee volunteers to take their place with management's permission.

**7.5 Double Time Rate on Saturdays**

Employees shall be compensated at the rate of double (2 times) their base hourly rate for all work performed over eight (8) hours on any shift starting on Saturday or their sixth (6th) consecutive day of work in a workweek.

**7.6 Sunday Work**

Employees will be compensated at double (2 times) their base hourly rate for all shifts starting on Sunday except as noted elsewhere in this Agreement.

**7.7 Call-Back**

Call-back hours for maintenance employees are those hours occurring between the actual reporting time and the employee's scheduled starting time. It shall not be considered call-back hours if a maintenance employee reports to work prior to his or her scheduled starting time due to a promotion or a voluntary change of shift. This call-back provision does not apply to employees scheduled to work on Saturdays or December 31st, and is intended to apply only in the case of emergencies.

The method of computing call-back pay shall be as follows:

Double time (2 times a straight-time hourly rate shall be paid for actual call-back hours worked.)

These call-back hours are to be computed separately and shall be disregarded when computing daily and/or weekly overtime pay.

**7.8 Supervisors Working**

Anyone employed in a supervisory capacity shall not perform any work usually done by employees covered by this Agreement.

**7.9 Daily Guarantee**

The Company will grant eight (8) hours call-in pay except that on Saturday the Company will grant four (4) hours call-in pay, except in cases of major breakdown (Superintendent of Engineering to determine whether or not breakdown would be of two (2) hours duration or longer), Sunday work, and the last working day before New Year's Day. The Union agrees to waive the guaranteed call-in pay whenever any employee is tardy or leaves his or her work voluntarily.

The above guarantee shall not apply if the Company is not able to schedule a full workday due to causes beyond its control such as but not limited to, fire, inability to obtain raw and package materials, lack of fuel, power or water, strikes, acts of God, or the Public Enemy.

From time to time the Company will ask for volunteers to leave work early. If the employees involved agree to this voluntary early dismissal, the employees waive the eight (8) hour guaranteed call-in pay.

**7.10 Third Shift Employees/Maintenance and Sanitation**

Regular 3rd Shift Operations, receiving and Shipping employees who are scheduled to work Monday A.M. work in support of scheduled production shall receive double (2 times) their straight-time classified rate for all hours worked, excluding "start up or clean up" assignments.

Maintenance and Sanitation employees who are scheduled to work Monday A.M., shall receive double (2 times) their straight-time classified rate for all hours worked prior to 7:00 A.M.

## ARTICLE 8 – JOB CLASSIFICATIONS AND WAGE RATES

### HOURLY RATES OF PAY

#### **8.1     Wage Rates**

	<u>5/01/2017</u>	<u>4/30/2018</u>	<u>5/06/2019</u>
STARTING RATE:	\$18.77	N/A	N/A
13 <sup>th</sup> Month through 18 <sup>th</sup> Month	\$22.79	\$23.25	N/A

New employees shall be paid 70% of the General Help rate as outlined above for all work performed during the first year of employment and 85% of the General Help Rate for the next six (6) months. After eighteen (18) months of employment, the employee will be paid the classified rate of the job they are assigned. Employees hired after January 1, 2018, refer to Transitional Employee article.

All wage increases will become effective on the Sunday nearest the effective date, at the start of the first scheduled shift that day.

	<u>5/01/17</u>	<u>4/30/18</u>	<u>5/06/19</u>
<u>BAKE SHOP DEPARTMENT</u>			
Band Oven Operator	27.44	27.99	28.55
Baking Relief	27.44	27.99	28.55
Cutting Mach. Oper.*	27.44	27.99	28.55
Mixer	27.44	27.99	28.55
Icing Blender	27.39	27.94	28.50
Assistant Mixer	27.14	27.68	28.23
Small Ing. Weigher	27.14	27.68	28.23
General Help	26.81	27.35	27.90
<b>*Dual sheet line CMO \$.15/hour</b>			
	<u>5/01/17</u>	<u>4/30/18</u>	<u>5/06/19</u>
<u>PACK. SERVICES DEPARTMENT</u>			
Sandwich Cream Mixer	27.44	27.99	28.55
Setup Relief	27.20	27.74	28.29
Sandwich Mach. Op. Setup	27.15	27.69	28.24
Assistant Cream Mixer	27.14	27.68	28.23
Machine Operator	27.09	27.63	28.18
General Help	26.81	27.35	27.90
<u>PACKING DEPARTMENT</u>			
Packer Relief	26.85	27.39	27.94
Packer	26.84	27.38	27.93
General Help	26.81	27.35	27.90
<u>SANITATION</u>			
Painter	27.74	28.29	28.86
Pest Control	27.14	27.68	28.23
Utility	27.08	27.62	28.17
Power Equipment Operator	27.09	27.63	28.18

	<u>5/01/17</u>	<u>4/30/18</u>	<u>5/06/19</u>
Sanitor	26.89	27.43	27.98
Lab Tech	27.80	28.36	28.93
EHS Tech	27.80	28.36	28.93
<u>RECEIVING DEPARTMENT</u>			
Materials Handler	27.28	27.83	28.39
<u>SHIPPING DEPARTMENT</u>			
Pallet Truck-Order Checker	27.28	27.83	28.39
Vacation Relief	27.28	27.83	28.39
<u>MECHANICAL DEPARTMENT</u>			
Electrician	29.60	30.19	30.79
Machinist	29.60	30.19	30.79
Mechanic	29.60	30.19	30.79
Multi-Skilled (Machine Repair) *			
Mechanic Apprentice**			
Electrician Apprentice**			
Lube Tech	28.08	28.64	29.21
Parts Person	28.18	28.74	29.31

\* Multi-Skilled (Machine Repair) rates are covered under a separate agreement

\*\* Apprentice rates are covered under a separate agreement.



## **8.2 Lead Facilitator Classification**

When mutually agreeable locally, the parties may agree to meet and discuss a Lead Facilitator Classification at the rate of \$25.77 per hour. Final review and approval will be made by the Corporate Director of Labor Relations and the BCTGM International Representative.

## **8.3 Upgrades**

When an employee works on a job having a higher classified rate than his or her regular classified job, such employee shall be paid at the higher classified rate for the length of time worked on such higher classified job. This shall not apply in the case of an employee on a trial period qualifying to fill a vacancy or new classification or to new employees during their first year of employment. Such assignments shall be made according to seniority as much as possible.

## **8.4 Early Call-In**

Any employee who is called in to work before his or her regularly scheduled shift will be given the opportunity to work through his or her regular shift period in addition to the "off schedule hours" that he or she works. It is understood, however, that the Company will not be obligated to provide any employee so working with more than twelve (12) hours of work in any day.

## **8.5 Injury on the Job**

When an employee sustains a work connected injury, which in the opinion of a competent authority is severe enough to cause a loss of time during the day or shift on which such injury occurs, the employee will not incur any loss of wages for the remainder of the normal workday or shift on which the employee is injured. The Company will make whole the employee's wages of eight (8) hours at his or her straight-time hourly classification rate for such normal workday or shift.

Payment of such wages shall not be construed as an admission of liability, on the part of the Company, under Workers' Compensation Laws, or under any other laws.

## **8.6 Company Scheduled Doctor Visits**

Employees scheduled by management for doctor's visits related to workers' compensation injuries which requires the employee to leave the bakery during his/her normally scheduled workday shall not lose time during that workday for said visit.

## **8.7 Reclassification of Job**

It is understood by the parties hereto that in the event a job is reduced in classification those employees currently engaged in the job will receive no reduction in pay but new incumbents of the job will be paid at the reduced rate.

## **8.8 Shift Differential**

Employees working regular second shift hours shall be paid a second shift bonus of twenty cents (20¢) per hour. Employees working regular third shift hours shall be paid a third shift bonus of twenty cents (20¢) per hour. For purposes of such differential pay, except for the Sanitation, Maintenance and Bake Shop Departments, the first shift shall be defined as starting at 7 A.M. and ending at 3 P.M., the second shift as starting at 3 P.M. and ending at 11 P.M., the third shift as starting at 11 P.M. and ending at 7 A.M. The Sanitation, Maintenance and Bake Shop Department start times are fifteen (15) minutes prior to the other department start times. Employees working two (2) or more hours before or beyond their regular shift period shall receive for such off-schedule hours any higher differential, which may apply to the shift in which such hours are worked. No employee shall receive less than his or her regular shift differential for off-schedule hours.

## **ARTICLE 9 – RELIEF PERIODS**

All employees covered by this Agreement shall receive two (2) relief periods of twenty-five (25) minutes each during a regular eight (8) hour day.

Such relief periods shall be scheduled by supervision. Employees will be required to ring time cards when going on and returning from relief periods.

Relief periods shall start no sooner than three-quarters (3/4) of an hour after starting time.

Each relief operator will be responsible for relieving seven (7) employees plus himself/herself.

Baking relief operators will be responsible for relieving six (6) employees plus himself/herself. Additional Baking Relief classifications will not be posted or filled due to this reduction, unless an employee is giving three (3) or more breaks for 50% of the time for two (2) consecutive months.

Any employee not receiving a relief during the regular period may take it at another time during the day or twenty-five (25) minutes will be added to the time worked for that day.

All employees covered by this Agreement shall utilize as their lunch period one of the two relief periods to be included in their regular eight (8) hour day.

## **ARTICLE 10 – HOLIDAYS**

### **10.1 Holiday Pay**

Subject to the conditions hereinafter stated the following holidays shall be allowed with eight (8) hours' pay for all employees covered by this Agreement.

New Year's Day	Labor Day
President's Day	Thanksgiving Day
Good Friday	Friday Following Thanksgiving Day
*Easter Monday	Last Normal Working Day before Christmas
Memorial Day	Christmas Day
Fourth of July	*Normal Working Day before New Year's
Employee's Birthday	

The Employee's Birthday shall be a paid holiday. A qualifying employee shall be required to take the birthday off. If the birthday falls on Saturday, the employee shall take off Friday; if the birthday falls on Sunday, the employee shall take off Monday; if the birthday falls on one of the other recognized holidays in the labor Agreement, the employee will take off either the day before or the day after said holiday. If the employee's birthday falls during an employee's vacation, the employee shall receive the Friday off with pay immediately before said vacation.

### **10.2 Holiday Work Test**

In order for an employee to receive such pay for the above named holidays, the following conditions must be fulfilled:

- a. The employee must have at least thirty (30) days of seniority.
- b. The employee must work one (1) full day in the week the holiday occurs. However, despite this requirement, if an employee is absent from work during the week prior to the holiday and/or the week of the holiday due to bona fide illness or disability (for which the Company may require a doctor's certificate), which illness or disability began during the week before and/or the week of the holiday, he or she shall receive pay for such holiday or holidays.

### **10.3 Employees on Layoff**

Employees in a layoff status occurring within forty-five (45) calendar days prior to a holiday shall receive pay for said holiday.

### **10.4 Overtime during a Holiday Week**

For the purpose of computing overtime pay the above named holidays shall be counted as eight (8) hours for all employees covered hereunder as days worked, except when the holiday falls on Saturday.

### **10.5 Work Performed On a Holiday**

Any employee working on one (1) of the above named holidays shall receive, in addition to his or her holiday pay, one and one-half (1½) times his or her rate of pay for all work performed on the holiday. Such hours actually worked on the holiday shall not be counted in computing weekly overtime.

### **10.6 Saturday/Sunday Holidays**

Holidays, which fall on Saturday, will be celebrated on Friday.

Holidays, which fall on Sunday, will be celebrated on Monday.

## **ARTICLE 11 – VACATIONS**

### **11.1 Vacation Amounts**

Employees shall receive vacations based on their length of continuous service with the Company in conformance with the following schedule:

<u>Length of Continuous Service</u>	<u>Duration of Vacation</u>
Twelve Months to Two Years	One Week
Two Years to Five Years	Two Weeks
Five Years to Twelve Years	Three Weeks
Twelve Years to Twenty Years	Four Weeks
Twenty Years to Twenty-Five Years	Five Weeks
Twenty-Five Years or More	Six Weeks

### **11.2 Vacations a Day at a Time**

Employees with five or more years of service will be limited to scheduling only 10 days per year as vacation days. Employees with less than five years of service will be limited to scheduling only 5 days per year as vacation days, subject to the following restrictions:

1. One (1) week prior notice.
2. Subject to reasonable operations requirements.
3. Seniority shall prevail in the granting of requests.

4. The one (1) week required notice provision shall not apply when the Company is requesting volunteers to take time off. In such events, employees may take one (1) day at a time with twenty-four (24) hours' notice on a seniority basis.
5. No split vacation will be allowed during the prime vacation period except under the following conditions:
  - a. Weekly vacation quota/schedule for the prime time vacation week requested has not been filled; and
  - b. Excess employees must be available and the reasonable operational requirements of the bakery will not be disturbed.

### **11.3 Vacation Qualifications**

Employees in the continuous service of the Company for one (1) year shall be eligible for one (1) week of vacation with pay only if they received twenty-six (26) regular paychecks. After passing their first employment anniversary, employees who are in the continuous service of the Company as of December 31 of each year will be eligible for a vacation with pay in the succeeding calendar year only if they received thirteen (13) regular paychecks in the calendar year preceding the year in which the vacation is taken, except that employees with ten (10) or more years of continuous service shall be eligible after five (5) days' work in the previous calendar year.

### **11.4 Vacation Pay**

The number of hours' pay which an employee shall receive per vacation week shall be the average number of hours per week worked during the first ten (10) weeks of the eleven-week period prior to the vacation multiplied by his or her straight-time classified rate; provided that such vacation pay shall not be less than forty (40) hours nor more than forty-eight (48) hours per week at the employee's straight-time classified rate.

When the Company performs vacation pay calculations, forty (40) hours will be used for lay off weeks except for layoffs that occur as a result on an employee's option to choose "my shift/my department only" which will be factored into the equation as a "0" hour work week(s). Time spent on compensable accidents and Union business directly affecting the Company shall be considered time worked (at a maximum of eight (8) hours per day or forty (40) hours per week) for this purpose only.

### **11.5 Pro Rata Vacation**

The Company agrees to pay pro rata vacation allowance to those who retire under the local Union's Pension Trust Fund, for the time actually worked from January 1st of the last year worked, on the basis of one-twelfth (1/12) of the vacation pay to which he or she is entitled for each full month in the employ of the Company.

### **11.6 Pay in Lieu of Vacations**

Eligible employees may accept one (1), two (2), three (3), or four (4) weeks' vacation pay in lieu of their vacation if Company specifically requests them to do so, but refusal to do so shall not prejudice their good standing as employees with the Company.

### **11.7 Vacation Selection**

1. The time for employees to take a vacation shall be at the discretion of the Company and shall be given, insofar as is practicable, in accordance with departmental seniority as applications for vacations are received. If weeks or days of vacation are available after the mast schedule for vacations has been completed, and there is a request for the time available, it will be scheduled based on a first come, first serve basis by day and seniority, and within two weeks the Company shall notify the effected employee (s) if their request will be honored. Changes in vacation periods among employees shall not be allowed except with consent of Company.



2. All employees eligible for Family Medical Leave (FMLA) shall be required to use, after the Master Vacation schedule is posted, one (1) week of unscheduled vacation time concurrently with approved Family Medical Leave (FMLA). If the employee is not eligible for more than one (1) week of vacation, this article shall not apply.

### **11.8 Vacation Plant Shutdown**

For vacation purposes, upon mutual agreement, the company and local union may schedule a vacation plant shutdown each calendar year commencing in 2014.

The plant shutdown will be scheduled in the month(s) of June, July or August.

The details of implementing the vacation plant shutdown will be discussed and resolved locally by the parties.

Any scheduled vacation plant shutdown week will be posted prior to the vacation selection process beginning at each location.

There will be no production scheduled during any such vacation plant shutdown.

## **ARTICLE 12 – SENIORITY**

### **12.1 Promotions**

Promotions shall be governed by both seniority and fitness for the job and shall be on a plant-wide basis as hereinafter set forth except that promotions to the Craft and Journeymen classifications within the Maintenance Department will be handled on a strict departmental basis.

### **12.2 Job Postings**

In order to establish a standard procedure for promotions and promote harmony among employees, the Union and the Company shall adhere to the following procedures outlined below:

All permanent factory job openings except General Help jobs and Craft and Journeymen classifications within the Maintenance Department shall be posted on all bakery bulletin boards and will contain such information as rate of pay and date after which no applications will be considered. Craft and Journeymen classifications within the Maintenance Department will be posted on a strict departmental basis.

Subject to the exceptions stated, all permanent job openings shall be posted on all bulletin boards within five (5) days after a job vacancy occurs. Such posting shall not be required if the job is indefinitely suspended with full knowledge of the department steward or, in the case of the Maintenance Department, if in the opinion of the Management there is no eligible employee qualified to fill the vacancy. The closing date in no case shall be less than five (5) days nor more than ten (10) days after the opening is posted. A record of the employees who apply for such jobs shall be kept in the Human Resources Department.

1. Promotions shall be made according to seniority, provided the applicant has the ability to do the work. If there are no applicants within the plant with the ability to perform the work, the Company shall assign the least senior employee with the ability to perform the work, or hire a new employee. Employees who are assigned a job bid and who are "in training" will not be assigned "rate change" opportunities. Successful job applicants must stay on new job a minimum of six months after training/qualifying unless their seniority will not allow them to hold the shift/department. Employees will be allowed to sign up for and accept promotional job bids.

If employees "in training" are laid off during progression period their training will be put on an eight week hold to allow them the opportunity to transfer back to the department/shift to continue their training. If employees on a "training hold" do not return back to their training program within eight weeks the job opportunity will be re-posted.

Employees who have not worked in a department and/or classification for over two years will be subject to a re-qualification trial period.

2. Subject to sub-paragraph 1 above, any employee who was absent when the job was posted because of vacation, sickness or leave of absence for a period of six (6) months or less, and who has more seniority than the promoted employee may lay claim to the job within one (1) week after his or her return to work. The following two (2) exceptions apply:

a. Employees absent due to workers' compensation will not be restricted to the six (6) month clause.

b. Any employee who is absent as of the original agreement date, November 1, 1988, will be "red circled" under the old Agreement.

### **12.3 Transfer Requests and Job Bids**

Employees shall be allowed to initiate three (3) personal transfers per calendar year before new employees are hired for said department. Additionally, employees will be allowed three (3) lateral or downward job bids per calendar year, with the exception that there will be no "downward" job bids allowed during the months of January and February. It is understood that employees who are displaced due to layoff will be given an additional transfer to return to their "home" shift/department. There shall also be no limit on the number of job bids to higher classified jobs.

### **12.4 Seniority in New Department**

Successful bidders on a job posting as indicated above or employees who are successful in transferring to a department as stated above, shall carry all accumulated seniority to their new job and department.

### **12.5 Giving Up a New Classification**

Employees who bid and are assigned to a new job classification may, within the first two calendar weeks, voluntarily give up the new classification and return to their previous job classification and shift, providing seniority permits.. After qualifying, no employee may voluntarily give up his/her job or position until the sixth (6) month minimum requirement has been met, then he/she with a five (5) day notice to the Supervisor may exercise a to give up the classification. Upon such notification, the employee shall be assigned to General Help, if available, in their present department, providing seniority permits. If General Help is not available, they shall be assigned to General Help in any department where seniority permits.

Employees who are away from a department or a classified job for over four (4) years will be required to re-qualify for said department or job. This clause will not affect employees who are performing said work on a periodic basis.

### **12.6 Layoffs**

In case of layoffs, the employees affected will be notified of such layoff during the first four (4) hours of their shift on the workday prior to such layoff except in case of breakdown.

Employees given untimely notice of layoff as set forth above shall have the option of reporting for work the following day or accepting the layoff. If said employees report for work on the day they were to be laid off it will be the obligation of the Company to work said employees in accordance with the terms of the Agreement. Said employees reporting out of line of seniority shall not obligate the Company to pay more senior employees laid off.

It is recognized by both Company and Union that none of the following refers to disciplinary layoffs, such layoffs are made due to infraction of Company rules and have no connection with seniority.

When the department and shift (a shop steward has been designated to represent) is scheduled to work, the shop steward of that department will have the top seniority for the purpose of avoiding layoff only. Chief Stewards shall have top seniority for the purpose of avoiding layoff only.

#### **12.7 Layoffs by Plant-Wide Seniority**

All layoffs will be made in order of plant-wide seniority with the exception of Craft, Journeymen and Apprentice classifications within the Maintenance Department, which will be handled on a strict departmental basis.

The departments in the bakery shall be as follows:

- |                                |                          |
|--------------------------------|--------------------------|
| 1. Baking Department           | 5. Receiving Department  |
| 2. Packing Services Department | 6. Shipping Department   |
| 3. Packing Department          |                          |
| 4. Mechanical Department       | 7. Sanitation Department |

All shifts shall be considered one and seniority shall prevail including the right to move into any job classification if previously qualified by holding that classification at any time during the previous two (2) years or if the employee has satisfactorily performed the work on a periodic basis within the past two (2) years.

#### **12.8 Displacement Due to Layoffs**

Employees moving from one department to another as a result of a layoff shall be placed in the opening created by the laid-off employees. Employees with the most seniority will be given preference in selecting job openings in other departments created by the layoff, provided they are qualified to perform the required work, before new employees are hired. Subject to Article 8, if the work required is in a higher pay rate classification, the employees will receive such rate. An employee will hold his or her previous rate for a period of eight (8) weeks in the event the rate is lower.

Employees moving from one shift to another as a result of layoff shall have a choice, by seniority, of the remaining shifts.

Employees who select the Bake Shop Department as one of their layoff options, must be qualified as stated in article 12.7, or agrees to remain in the Bake Shop Department for a four (4)-week training period starting when their layoff begins. During this training period, the employee will waive their automatic return rights based off their option on file. The company retains the right to manager the number of employees in training at any given time. Employees will train in seniority order and on a case by case basis. The four (4)-week training window may be extended or decreased.

#### **12.9 New Department**

When a new department is created, consideration shall be given to the employees having seniority with the Company in any department to fill open jobs if Company is requested for a trial on such jobs by any employees. All such jobs shall be on a trial basis. Employees unable to fill the new jobs capably will be returned to their former positions; however, any employee so removed may use the regular grievance procedure for an adjustment.

#### **12.10 Recall from Layoff**

Employees being recalled to work from a layoff to their previous shift must return to work upon notification.

Employees being recalled to work from a layoff to a shift other than their previous shift may either accept or reject the recall without prejudice.



However, employees who have been laid off shall be recalled in accordance with seniority before new employees are hired provided such laid off employees have the ability to perform the work required by the Company. If any such laid off employee fails to report for work within three (3) calendar days following the date he or she is recalled by Company he or she shall lose his or her continuity of plant-wide seniority. The Company, in recalling employees, may rely solely upon the addresses and telephone numbers of employees on the personnel records of the Company. Continuity and accumulation of plant-wide seniority shall be unbroken in all layoffs, except that continuity and accumulation of seniority shall be broken in a layoff if the employee is not recalled within twenty-four (24) months from the beginning of such layoff.

Employees having five (5) or more years seniority on the date of the layoff shall be entitled to recall without a break in plant-wide seniority for an indefinite period of time.

#### **12.11 Absence**

In case an employee is unavoidably kept from work by reason of sickness, or other legitimate cause, and such employee notifies the Company's absentee phone as outlined below, he/she will not lose his/her job or seniority rights:

1. Calls for absenteeism must be made no later than one half (1/2) hour before the employees scheduled starting time or the employee will be recorded as "No Call/No Show".
2. Calls for tardiness must be made no later than one (1) hour after scheduled starting time or the employee will be recorded as "No Call/No Show". The company will consider extenuating circumstances if verification/proof on an employee's inability to phone timely is provided.

#### **12.12 Leaving the Bargaining Unit**

Employees who have been transferred to a non-union job outside the bargaining unit or who accept a full-time job with the local Union will retain seniority in the event they return to a job within the bargaining unit providing they were formerly members of the local Union or came up through the ranks before the Union was formed.

Employees who are promoted outside the bargaining unit to any position with the Company will not be able to return to the bargaining unit except during the ninety (90) day training period. Said employees will be able to return during the ninety (90) day training period providing they voluntarily give up their new position, or if unable to qualify for the new position.

After December 1, 1978, should the Company decide to rehire any former management employee into the bargaining unit they shall have a seniority date as of the date of rehire.

#### **12.13 Union Assignments**

An employee who accepts a full time job with the local Union will retain seniority in the event they return to a job within the bargaining unit, providing they were formerly members of the local Union. Seniority will accrue while on Union assignment.

### **ARTICLE 13 – LEAVES**

#### **13.1 Leave of Absence**

When the requirements of the Company will permit and subject to the conditions hereinafter set forth an employee may, at the sole discretion of the Company, on his or her written request, submitted in duplicate to the foreman of the particular department, and for good and sufficient reason therein stated, be granted a leave of absence without loss of seniority but without pay for a period of not to exceed thirty (30) days with the privilege of renewal of such leave for one (1) additional period not to exceed the period of the original leave of absence.



Leaves of absence shall not be used for the purpose of extending the particular employee's vacation and shall not be used by the particular employee to seek or obtain other employment. If the particular employee shall seek or obtain other employment during a leave of absence, such employee shall lose all seniority rights.

A copy of each application for leave of absence will be delivered by the Company to the appropriate shop steward.

Exception as to the length of leave of absence can be made by agreement between Company and Union Shop Committee.

Leave of absence for pregnancy shall be treated as any similar medical leave.

### **13.2 Jury Duty Pay**

When an employee is called for jury service he or she shall be compensated for time lost from his or her job at his or her regular hourly rate. Employees shall not be expected to report for work on their jobs if they are required to report for jury duty; on days when they do not report they will work their full shifts.

### **13.3 Bereavement Leave**

New employees must be on the Company's payroll for thirty (30) calendar days in order to become eligible for funeral leave.

In the event of death in any employee's immediate family (employee's parents, spouse, children, brothers, sisters, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandfather, grandmother, or grandchild), or the death of an employee's son-in-law or daughter-in-law, the employee shall be entitled to be absent from work for up to three (3) consecutive scheduled normal working days and will be compensated for up to twenty-four (24) hours of straight time pay for normal work time lost. The employee will not be forced to work the weekend before or after a bereavement leave provided the weekend is contiguous to the bereavement leave. This bereavement leave shall be taken within fourteen (14) days from the date of death unless mutually agreed upon. Such absentee compensation shall not include pay for lost overtime, vacation time or premium pay. It shall include paid holiday pay and night premium pay. The Company will accept newspaper notice or coroner's statement as proof of death.

## **ARTICLE 14 – STEWARDS AND SHOP COMMITTEE**

Company recognizes the right of the employees to select a Chief Steward and a mutually agreeable number of shop stewards from among the employees covered by this Agreement.

When such Shop Stewards have been selected, Union shall certify to Company the names of such Shop Stewards and the particular department each such shop steward represents.

The Company will recognize a Union Shop Committee, constituted of the President and Secretary of the Union, plus the Chief Steward all of whom shall be permanent members of such Committee and function as needs arising may be.

## **ARTICLE 15 – SETTLEMENT OF GRIEVANCES OR DISPUTES**

### **15.1 Grievance Procedure**

Employees may not engage in Union activities during working hours, except when it becomes necessary for an officer or a steward of the Union to contact an employee during working hours, they may do so provided they secure permission from their Department Supervisor and notify the Foreman of the department they are visiting.

It is mutually understood and agreed that any employee having a grievance against the Company shall observe the following:

The employee may take the matter to his or her Foreman or Shop Steward. If an adjustment cannot be made within five (5) working days of the time of the alleged grievance, it shall then be presented in writing within two (2) working days thereafter, by the Grievance Committee of the Union to the representative authorized by the management to handle grievances and they shall meet for the purpose of adjusting the grievance within ten (10) days. If not satisfactorily adjusted, the Local Union may elect to have the matter taken up between a representative of the Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union and a proper representative of the Company.

### **15.2 Arbitration**

If an agreement cannot be reached within thirty (30) days following the date of the written grievance (unless such period is extended by mutual agreement between the parties), the matter will be submitted to arbitration. Notice to arbitrate shall be made in writing by either party to the other within five (5) working days following the date of the meeting between the proper representatives of the Company and a representative of the Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union, AFL-CIO-CLC.

The Board of Arbitration shall consist of one (1) member representing the Company and one (1) member to represent the Union; these two (2) to select a third (3rd) disinterested member within five (5) days. If they are unable to agree on a third (3rd) member, then the parties shall request the Federal Mediation and Conciliation Service to appoint such third (3rd) member of the Board. Such Board shall meet within five (5) days after such appointment and the decision of the majority of such Board shall be binding on all parties; and the decision of the Board shall be made in ten (10) days after the first meeting.

In the case of arbitration, the expenses of the representatives appointed by the Union shall be paid by the Union and the expenses of the representatives of the Employer shall be paid by the Employer. Any expenses incurred for the third (3rd) neutral party will be borne equally by the Employer and the Union.

No individual employee or member shall have the right to invoke arbitration without written consent of the Union. If such written consent is refused, the employee shall have no further recourse to the Company or the Union.

### **15.3 Employees Right to Appeal**

Any employee on the payroll beyond the trial period who is suspended or discharged shall have the right to appeal through the grievance settlement procedure hereinafter set forth, provided a written protest is filed with the Union Shop Committee and given to the Company within five (5) working days after the suspension or discharge is made.

### **15.4 Grievance against the Union**

In the event the Company has a grievance against the Union, such grievance shall be presented in writing to the Business Agent, by the Human Resources Manager. Such grievance shall follow the grievance procedure outlined herein.

## **ARTICLE 16 – HEALTH BENEFITS FOR ACTIVE EMPLOYEES**

The Company will provide health benefits for active employees as stated in our letter of agreement dated March 14, 1994 between Keebler Company and BCTGM Local No. 70 and modified at National Negotiations in April 1996, April 1998 and November 2002, April 2006 and April 2009 and stated in letter of Agreement dated May 6, 2009. Effective 08-07-18 current employees will pay as follows:

Effective 8/07/2017	3% co-premium on total costs \$13.10/week
Effective 4/30/2018	3% co-premium on total costs \$14.02/week
Effective 5/06/2019	3% co-premium on total costs \$15.00/week

New hires effective 1-01-18:

Transitional Employees shall be entitled to elect an 80/20 coinsurance PPO, HSA A, or HSA B insurance plan as outlined in Exhibit A.

Co-Premiums effective 1/1/18 10% of total cost each year  
80/20 PPO = \$38.06/wk 1<sup>st</sup> year, 10% total cost 2<sup>nd</sup> year, 10% total cost 3<sup>rd</sup> year.

#### **ARTICLE 17 – HEALTH BENEFITS FOR RETIRED EMPLOYEES**

Health benefits for employees who retired prior to December 31, 2002 will be provided as stated in our letter of agreement dated March 14, 1994 between Keebler Company and BC&T Local No. 70 and last updated May 6, 2009.

#### **Cobra Benefits**

Employees at the Grand Rapids Bakery who retire on or after August 1, 2006 and opt to continue their medical benefit through COBRA, will be required to submit the applicable COBRA fee, which will be reduced by 25%. Employees hired after January 1, 2018, will not be eligible for retiree health care benefits. The Company will advise each Local Union of the COBRA fee annually.

It is hereby agreed to provide insurance or Health Benefits as follows:

- a. The Employer hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated May 12, 1953, as amended, establishing the Bakery and Confectionery Union and Industry International Health Benefits Fund (hereinafter called the Health Benefits Fund) and said Agreement is made part hereof by reference.
- b. Commencing with May 1, 2006, the Employer agrees to make payments to the Health Benefits Fund for each employee working in job classifications covered by a Collective Bargaining Agreement between the Employer and Union as follows:

For each day or portion hereof, which an employee works in such a job classification or receives pay in lieu of work (such as holiday, vacation, pro rata vacation and severance pay), the Employer shall make a contribution of 75¢ per hour to the Health Benefits Fund, but not more than \$120.00 per month for any one employee. Effective 01/01/14 the monthly contribution rate will be \$184.00. (The stated maximum does not apply to pro rata vacation or severance pay.)

Contributions shall be payable on behalf of employees beginning on the 1<sup>st</sup> day the employee begins working in a job classification covered by the Collective Bargaining Agreement between the Employer and the Union, (but no later than the 91<sup>st</sup> day of employment). When contributions commence after the first day of employment, the parties should review the eligibility rules of the Plan to determine when coverage for a new employee will begin.

Contributions shall be paid on behalf of all employees working in covered job classifications – there are no exceptions for employees who are not members of the Union, temporary, seasonal, or part-time employees, for leased employees or for any other type of employee. The term “employee” does not include a self-employed person, corporate officer, owner, or partner.

- c. The payments made in accordance with (b) above shall be allocated as follows:

75¢ per hour to provide Health Benefits for Pensioners in accordance with Plan W-1 of said Fund.



13¢ per hour to provide Health Benefits for Pensioners in accordance with the Plan P-26 of said Fund, effective May 1, 2006. Effective 01/01/14, the Company will provide P-Plan 40 at the \$24,000 level.

- d. If at any time during the term of this Collective Bargaining Agreement, or any renewal or amendment thereof, there should be enacted any laws or regulations requiring the Employer to secure, provide, or pay for Insurance or Health Benefits coverage not provided for in said Plan, either party hereto may, upon 30 days written notice to the other, reopen this Collective Bargaining Agreement solely for the limited purpose of making such adjustments as may be appropriate in the light of said new laws or regulations.
- e. Contributions provided for herein shall be paid monthly and shall be accompanied by a completed remittance report. Both payment and report are due on the tenth day of the month following the month covered by the report. In the event the Employer fails promptly to pay amounts owed, the Employer shall pay such collection costs, including court costs and reasonable attorneys' fees, as the Health Benefits Fund shall incur, and shall pay interest at such rates as the Trustees shall fix from time to time.
- f. Contributions provided for herein shall be paid at the rate set forth in paragraph (b) during the term of this Collective Bargaining Agreement. At any time after the initial term, the contributions shall be paid at the rate set forth by the Health Benefits Fund office for coverage beyond the term of the Agreement. The Employer agrees to provide such coverage and pay such new rate unless the Fund is notified in writing thirty days prior to the requested cessation of coverage.
- g. This clause encompasses the sole and total agreement between the Employer and the Union with respect to Health Benefits Fund coverage. If any other agreement between the Employer and the Union (including the Collective Bargaining Agreement) contains provisions inconsistent with this clause, those inconsistent provisions shall have no force and effect with respect to the obligations and agreements set forth herein.
- h. This clause is subject in all respects to the provisions of the Labor-Management Relations Act of 1947, as amended, and to any other applicable laws.
- i. Effective August 1, 2017, the Accident and Sickness benefit will be increased to \$380.
- j. Effective 01/01/15 the Traditional Health Benefit Plan in Grand Rapids will be discontinued.

#### **ARTICLE 18 – UNIFORMS**

The Company will issue five uniforms per year to all regular employees and allow up to four additional uniforms to be purchased at 50% of the company's cost beginning November 1, 2006. The calendar year for ordering new uniforms will continue to be as in the past, November 1 through October 31. Employees may substitute one of their uniform sets for a raincoat and/or insulated jacket. Approved slacks, tunic toppers, dresses and/or culottes shall be optional for female employees in addition to regular pants/shirts. The Company will furnish regular employees twenty-four (24) hairnets per year or two (2) soft caps per year where presently used.

A regular employee is someone employed at least thirty (30) days. Any new employee may purchase two (2) uniforms at Company cost. Uniforms include pants and shirts for male employees.

#### **ARTICLE 19 – SAFETY PROGRAM**

A. It is the desire of the Company and the Union to maintain high standards of safety in order to eliminate, insofar as possible, industrial accidents and illnesses. The insurance carrier of the Company has established a safety



program, which is now being followed by the Company. The Union shall have the right to appoint two (2) employees covered hereunder to be members of the Safety Committee operating under said Safety Program.

B. All reports and recommendations made by said Committee or by the insurance company shall be made in writing and a copy thereof shall be delivered to the Company and a copy thereof shall be delivered to the Union at its office.

C. All reports and recommendations and a written statement of the action taken thereon shall be kept by the Safety Committee as a permanent record and the same shall, at all times, be accessible to the Safety Committee or any members thereof.

#### **ARTICLE 20 – SEVERANCE PAY**

The Company hereby sets forth its policy with respect to severance pay for employees subject to this Agreement.

Employees covered hereunder shall be subject to severance payments only in the event that the plant in which they are employed is permanently closed or removed from the metropolitan area in which it is now located. Employees separated from employment, for reasons indicated above, shall receive severance pay, subject to the exceptions noted below, as follows:

1. One (1) week's pay (forty (40) hours' straight-time pay) at his or her then hourly rate for each employee for each year of continuous service from the date of last employment with the Company.
2. For purposes of determining the years of continuous service from the date of last employment all employees who are separated from employment by reason of cessation of operations, or removal of the plant as above stated and have at least one (1) year of continuous service immediately prior to January 1 of the year in which operations cease, or such removal occurs shall be credited with one (1) year of service for the calendar year in which such operations cease or removal occurs. Employees on legitimate leave, as set forth in Article 13 of this Agreement, shall be considered currently employed for the purposes of this Section.
3. The above described severance pay will not be paid to:
  - a. Any employee who is offered other reasonable employment, within fifty (50) miles, with the Company and either accepts or refuses.
  - b. Any employee who voluntarily quits before he or she is separated from employment by the Company.

#### **ARTICLE 21 – PENSIONS**

Employees covered hereunder will continue to receive benefits under the Kellogg Retirement Plan, a copy of which is distributed to all employees. **Pension Benefit increase schedule is as follows:**

<b>Effective upon ratification June 30<sup>th</sup>?</b>	<b>\$2.00 increase in benefit schedule</b>
<b>Effective April 30, 2018</b>	<b>\$2.00 increase in benefit schedule</b>
<b>Effective May 06, 2019</b>	<b>\$2.00 increase in benefit schedule</b>

#### **ARTICLE 22 – PLANT VISITATION**

The Company agrees that duly authorized representatives of the Union shall be granted admission to the Bakery, to discuss Union business with members of the Union, after proper notification to the Bakery Management provided such visits do not interfere with or interrupt production.

### **ARTICLE 23 – NON-DISCRIMINATION**

The Company and the Union agree that there will be no discrimination against any qualified employee because of race, religion, color, age, sex, disability, national origin, or because an employee is a Veteran of the Vietnam Era, except where sex is a bona fide occupational qualification. If the masculine gender is used anywhere in this Agreement, it shall be deemed to apply to both male and female employees.

### **ARTICLE 24 – SEPARABILITY AND SAVINGS**

If at any time during the term of this collective bargaining agreement or any renewal or amendment thereof, regulations that make any Article, Section (or portion thereof), of this Agreement unlawful then either party hereto may, upon written notice to the other, reopen this collective bargaining agreement for the purpose of making such changes as may be appropriate in the light of said new laws or regulations. The provisions of this collective bargaining agreement are severable and if any one or more provisions become unlawful, the other shall, nevertheless remain in full force and effect.

### **ARTICLE 25 – ATTENDANCE BONUS**

#### **25.1 Qualification**

For each qualifying period, eight (8) hours pay at the employee's average hourly earnings (including overtime hours) shall be granted as an attendance bonus for each four (4) months of perfect attendance. Absences resulting from funeral leave, vacations, jury duty, union business, military and industrial accidents whenever such absences began and/or ended during the bonus period or absences by natural emergencies resulting in government declaration prohibiting employees from reporting to work shall not be counted against the perfect attendance bonus plan. The attendance bonus period shall be December 1 through March 31, April 1 through July 31, and August 1 through November 30. Payment shall be made on or before the 20th of the month following the completion of each four (4) month period of perfect attendance.

#### **25.2 Employees on Layoff**

Employees who are laid off for twenty (20) working days or less during a four (4) month period as outlined above shall qualify for only eight (8) hours pay as specified in Section 25.1.

## **ARTICLE 26 – STEWARDS TRAINING**

The Company shall pay each Shop Steward a maximum of two (2) days' pay of eight (8) hours at the straight-time hourly classification rate, each year, during the term of the contract, to attend a Union Education Conference, provided that the Union gives the Company at least two (2) weeks' advance notice of the date of the conference and such absence will not disrupt business operations. The Company shall provide subject information to the Union regarding the agenda for the second day of the conference. The Company will pay Local #70 officers who are Kellogg Employees eight hours pay at straight time for each day of attendance/participation at the annual Union Stewards training.

## **ARTICLE 27 – NEW EMPLOYEE JOINT ORIENTATION**

The Company and Union agree to utilize a joint orientation presentation for newly hired employees that will encompass, but not be limited to, the parties' commitment to quality, productivity, and attendance.

## **ARTICLE 28 – 401(K) PLAN**

The Company will continue to administer the established 401(K) Plan for all qualified employees in accordance with applicable Company and Federal rules and regulations.

## **ARTICLE 29 – SUBCONTRACTING**

The Company and Union agree that the first priority of in-plant maintenance employees is to maintain the operation of these facilities in a timely, cost efficient and effective manner.

It is understood and agreed that the decision to subcontract shall be made by management, and that such decisions will be discussed with the Local Union at a time in advance of the actual subcontract.

Management shall inform the Local Union's designated representative whenever any work is to be subcontracted and will discuss with the Local Union the reasons for such subcontracted work. The Company also agrees it will not subcontract any work provided it then has sufficient manpower, skills, ability and equipment in the plant to timely and cost efficiently perform the work involved, keeping in mind the first priority of our maintenance employees is the maintenance of our equipment. The Company recognizes the Union's rights on the issue of subcontracting.

## **ARTICLE 30 – TERMINATION AND AMENDMENT CLAUSE**

### **30.1 Term**

This Agreement shall go into effect on the 1st day of May 2017 and shall continue in full force and effect through April 30, 2020.

### **30.2 Renewal Provision**

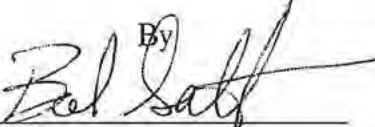
It is further agreed that on the 1st day of May 2017, this Agreement shall automatically be renewed for one (1) year from such date and thereafter on each anniversary of said date without further action of either party hereto, provided that either party may terminate or request modification of this Agreement on the 1st day of May, 2017, or any anniversary of said date, by giving sixty (60) days' previous notice in writing to the other party submitting at the same time an itemized statement of the desired changes and modifications.

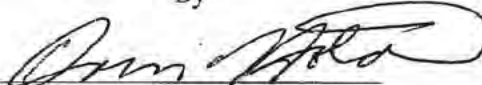
**30.3 Witness**

IN WITNESS WHEREOF the parties have caused this Agreement to be executed in triplicate, by their respective duly authorized agents in Grand Rapids, Michigan, on the day and year first above written.

KEEBLER COMPANY  
GRAND RAPIDS, MICHIGAN PLANT

BAKERY, CONFECTIONERY, TOBACCO  
WORKERS' AND GRAIN MILLERS  
INTERNATIONAL UNION, AFL-CIO-CLC,  
LOCAL NO. 70

By  
  
\_\_\_\_\_  
Bob Solt,  
Plant Manager

By  
  
\_\_\_\_\_  
Orin Holder,  
Business Agent

Date Signed

Dec 21, 2017

Date Signed

21 Dec 17



# **Attachment B**

# MEMORANDUM OF AGREEMENT

KEEBLER COMPANY/GRAND RAPIDS BAKERY

BCTGM LOCAL #70

The following Company proposals have been resolved in their entirety as follows:

- ◆ All references to the Distribution/Delivery Departments including job classifications will be removed from the contract.
- ◆ All General Help jobs in Packing Services will be assigned on a rotation basis. If lines 4 & 5 are scheduled to run concurrently, automated crème delivery will be used on line #4 and shoveling will be done on line #5.
- ◆ The Maintenance and Sanitation department start times will be changed to coincide with Bake Shop, i.e., 6:45 AM, 2:45 PM and 10:45 PM.
- ◆ Eliminate obsolete classifications from CBA (Clean up Contract)
- ◆ The Company shall have the right to schedule work seven days per week. Contract language regarding Sunday being voluntary and arbitration award redefining Saturday after midnight as "Sunday", will be deleted/voided.
- ◆ Overtime Sign up for Saturday Sanitation, weekend production, belt sewing, end of week cleanup, Saturday setup/changeover work and Monday morning start up work will be handled as follows:

✓ Employees will have until 8:00 AM Thursday to sign up for or delete their names from the Sanitation volunteer list, weekend production list or plantwide list.

- ✓ Job assignments for weekend production and/or Sanitation work will be posted by 1:00 PM on Thursday. All employees assigned work on Thursday at 1:00 PM will be expected to work as scheduled.
- ✓ Employees who are not assigned weekend production and/or Sanitation work by 1:00 PM Thursday may remove their name from further consideration if done prior to 8:00 AM Friday. Any employee names remaining on the list after 8:00 AM Friday will be required to work should any new opportunities arise.

**Company**

Post Nicks 10-30-02

## Union

Union  
30012  
10.30.02 William A. Q

- ✓ Employees will have until 8:00 AM Friday to add their names to and/or delete their names from the belt sewing list, end of week clean up list, weekend change over/set up list or Monday morning start up list. Employees who are assigned work after 8:00 AM Friday will be expected to complete the assigned work segment.
- ✓ Production employees will be expected to work their own department/shift unless there are sufficient qualified employees in their department interested in working in their place.
- ✓ Employees assigned to work weekend production on Thursday will be allowed to work Saturday belt sewing instead if there are sufficient qualified employees in their department interested in taking their place. The Production Scheduler must approve any changes in overtime assignment.

The following Union proposals have been resolved in their entirety as follows:

- ♦ Company will create a form allowing employees to arrange weeks of vacation in lieu of a lay off. Lay off information sent to MESC will be adjusted accordingly to delete the names of employees making this election. Employees granted vacation versus lay off may not file any unemployment claims, as this would be fraudulent and result in disciplinary action.
- ♦ Employees will not be "required" to work more than one four-hour overtime segment per shift.
- ♦ Employees being laid off to other departments/shifts must exercise their right to "bump" on Monday or the first day they report to the new department/shift. If the position/person they wish to "bump" is not being utilized on that particular day but is scheduled to be utilized later in the week, "bumping" will be allowed providing they meet qualification requirements.
- ♦ Company will create a sign up sheet for weeks of vacation to include "alternate week" choices. When the Vacation "Master list" is being created in the spring vacation weeks will be granted by department/shift in seniority order including the use of "alternate choices". Once the Vacation "Master list" is completed and posted, all other vacation selections the remainder of the year will be handled on a first come first served basis.
- ♦ The Company will schedule vacations for the entire calendar year using the vacation quota for "Prime Time" selections and allow vacations the remainder of the year, as operational requirements will allow.

Company

*Kinda Smith* 10-30-02

Union

*30112 Cam. Mola*  
10-30-02 *William A. D.*

## **Memorandum of Agreement**

**Philadelphia, Pennsylvania**

**October 31, 2002**

Memorandum of Agreement entered into this 31<sup>st</sup> day of October, 2002 between Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, AFL-CIO-CLC, Local Union No. 42 Columbus, Georgia; Local Union No. 70 Grand Rapids, Michigan; Local No. 253 Cincinnati, Ohio; Local No. 434 Macon, Georgia; Local 492 Philadelphia, Pennsylvania and Keebler Company, Elmhurst, Illinois and its Bakeries and Distribution Center located at:

Columbus, Georgia	Macon, Georgia
Grand Rapids, Michigan	Cincinnati, Ohio
Philadelphia, Pa. (excluding wages)	

### **Change Union's name from BCT to BCTGM**

The Employer agrees to correct the Union's name from BCT to BCTGM

### **Product Sourcing (Co Packing )**

The BCTGM International Union and Keebler Company agree to meet and discuss opportunities for additional repatriation of Keebler products.

### **SUBCONTRACTING**

The Company and Union agree that the first priority of our in-plant maintenance employees in the Columbus, Grand Rapids and Macon bakeries is to maintain the operation of these facilities in a timely, cost efficient and effective manner.

It is understood and agreed that the decision to subcontract shall be made by management, and that such decisions will be discussed with the Local Union at a time in advance of the actual subcontract.

Management shall inform the Local Union's designated representative whenever any work is to be subcontracted and will discuss with the Local Union the reasons for such subcontracted work. The Company also agrees it will not subcontract any work provided it then has sufficient manpower, skills, ability and equipment in the plant to timely and cost efficiently perform the work involved, keeping in mind the first priority of our maintenance employees is the maintenance of our equipment. The Company recognizes the Union's rights on the issue of subcontracting.



- ♦ The Company will consider requests for additional vacation weeks during periods of heavy lay off if operational needs can be met by recalling laid off employees.
- ♦ Employees will not be required to work over past their shift quitting time if they have a "pre-existing"/scheduled appointment with a dentist, medical specialist or having medical tests/treatments to undergo. Employees scheduled for physical therapy due to workers compensation claims will have their therapy rescheduled.
- ♦ The Company and Union will meet with Keebler Computer programmers to improve weekly employee scheduling system. When employees are laid off from their current department, they will be allowed to bump across the shift if they have elected a "shift preference". Employees being laid off will also have an opportunity to "bump" in to other departments or fill available openings whichever opportunity is more preferred as per the employees "lay off option form". All other lay off elections currently in practice will continue. The new system will be in place April 21, 2003.
- ♦ Raincoats will be available for employees to order as per the Company's uniform program. One set of uniforms can be exchanged for a raincoat or they can be purchased.
- ♦ Company will establish a "recall sign up list" for laid off employees to sign up for weekend overtime. Laid off employees will have until 8:00 AM each Thursday to sign up for working weekend overtime that week. Laid off employees will be required to work if assigned. If laid off employee ask someone else to sign them up, the Company is not liable for any errors that result. Laid off employees will be offered weekend work after other overtime options are exhausted. Laid off employees will be offered work that they are qualified to perform.
- ♦ Company will continue the temporary annuity for retiree health insurance during the term of the contract and two months beyond the expiration of the contract. The amount of the annuity is limited to the current monthly amount.

Signed for the Company:

*Scott J. King* 10-30-02

Signed for the Union:

30 Oct 02 *Chris M. [Signature]*  
10-30-02 *William [Signature]*

**From:** [Bean, Terrance M.](#)  
**To:** [Orin Holder](#)  
**Subject:** NLRB Case No. 07-CA-279243, Kellogg Company  
**Date:** Friday, September 10, 2021 1:33:00 PM  
**Attachments:** [image001.png](#)

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Dear Mr. Holder –

I hope this message finds you well. The Regional Director has made a determination on the merits of charge you filed on June 30, 2021 against Kellogg. After thoroughly evaluating the evidence in this matter, the Acting Regional Director has determined that there is insufficient evidence to establish a violation of the Act as alleged in the charge. At this time, you may choose to withdraw the charge in its entirety or you may choose to have the Region issue an administrative dismissal.

There are two types of dismissals; a short form and a long form. The short form dismissal simply states that the Region was unable to adduce sufficient evidence to establish a violation of the Act. The long form dismissal gives a more detailed explanation as to why the Region determined there was insufficient evidence to establish a violation of the Act. The long form dismissal letter is also published on our public website with personally identifiable information redacted. Both types of dismissals afford you the opportunity to appeal the Acting Regional Director's decision to the Office of Appeals in Washington, D.C. if you do not agree with the decision. The appeal would be due two weeks from the date the Region issues the dismissal letter.

Please let me know of your decision at your earliest convenience. If I do not hear back from you by noon on **Tuesday, September 14, 2021**, the Region will proceed with issuing a short form dismissal. I am sincerely sorry that we were not able to achieve the outcome you desired. Please do not hesitate to contact me should you have any questions or concerns.

Respectfully,



Terrance Bean  
Field Examiner  
National Labor Relations Board  
Region 7 – Resident Office

**Direct:** (616)930-9159  
**Fax:** (616)456-2596

Gerald R. Ford Federal Building  
110 Michigan Street N.W. Suite 299  
Grand Rapids, Michigan 49503-2313

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En español:

[@NLRBGCS/@NLRBS](#)

Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by

electronically submitting (E-Filing)  
them through the Agency's web site  
([www.nlr.gov](http://www.nlr.gov)).



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 05-200  
Detroit, MI 48226

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (313)226-3200  
Fax: (313)226-2090

September 14, 2021

Orin Holder, Business Agent  
Local 70, Bakery, Confectionary, Tobacco Workers  
and Grain Millers International Union (BCTGM), AFL-CIO  
158 36th St SE  
Grand Rapids, MI 49548-2260

Re: Kellogg Company  
Case 07-CA-279243

Dear Mr. Holder:

We have carefully investigated and considered your charge that Kellogg Company has violated the National Labor Relations Act.

**Decision to Dismiss:** Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

You allege that that within the previous six months, the Employer has failed and refused to bargain collectively and in good faith with the union by, inter alia, making unilateral changes to past practices, in violation of Section 8(a)(5) of the Act.

Unilateral actions by an employer that materially, substantially, or significantly modify terms or conditions of employment constitute a per se violation of Section 8(a)(5). Such actions also allow for an inference of subjective bad faith. *NLRB v. Katz*, 369 U.S. 736 (1962). However, the Employer's actions in the instant case of posting a list of tentative overtime assignments on Wednesdays instead of Thursdays does not constitute a "material, substantial or significant" change to any term or other condition of employment and, therefore, does not amount to an unlawful unilateral change. While the Employer posted a tentative list earlier than its prior practice, it continued the practice of posting a final list on Thursdays and not mandating anyone to work overtime on the weekend who was not present at work on the Thursday before. As such, the posting of the Wednesday list does not result in a material, substantial, or significant change to employees' terms and conditions of employment. Additionally, the investigation failed to adduce sufficient evidence to establish that the Employer repudiated the parties' collective bargaining agreement or failed to bargain over any mandatory subject of bargaining.

Accordingly, further proceedings on your charge are unwarranted.

**Charging Party's Right to Appeal:** The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

**Means of Filing:** You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written



instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at [www.nlr.gov](http://www.nlr.gov). See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked questions are also available at [www.nlr.gov](http://www.nlr.gov). If you require additional assistance with E-Filing, please contact [e-Filing@nlrb.gov](mailto:e-Filing@nlrb.gov).

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

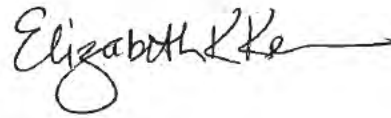
The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

**Appeal Due Date:** The appeal is due on **September 28, 2021**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than September 27, 2021. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

**Extension of Time to File Appeal:** The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before September 28, 2021**. The request may be filed electronically through the *E-File Documents* link on our website [www.nlr.gov](http://www.nlr.gov), by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after September 28, 2021, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

**Confidentiality:** We will not honor requests to limit our use of appeal statements or evidence. Upon a request under the Freedom of Information Act (FOIA) by a party during the processing of an appeal, the Agency's FOIA Branch discloses appeal statements, redacted for personal privacy, confidential source protection, or other applicable FOIA exemptions. In the event the appeal is sustained, any statement or material submitted may be introduced as evidence at a hearing before an administrative law judge. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elizabeth K. Kerwin", with a long horizontal flourish extending to the right.

Elizabeth K. Kerwin  
Acting Regional Director

Enclosure

cc:

**(b) (6), (b) (7)(C)**

Kellogg Company  
310 28th St SE  
Grand Rapids, MI 49548-1157

Jeffrey J. Canfield, Esq.  
Kellogg Company  
One Kellogg Square  
Battle Creek, MI 49017

Nicole M. Perry, Attorney  
Kellogg Company  
One Kellogg Square  
Battle Creek, MI 49017

Keith E. Eastland, Attorney at Law  
Miller Johnson, PLC  
45 Ottawa Avenue, SW  
Suite 1100  
Grand Rapids, MI 49503

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

---

Case Name(s).

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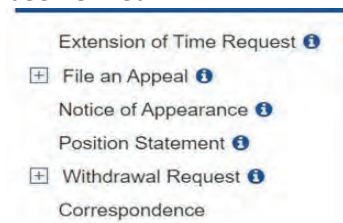
Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

---

*(Signature)*

## E-FILING TO APPEALS

1. **Extension of Time:** This document is used when the Charging Party is asking for more time to efile an Appeal.
  - If an Extension of Time is e-filed, and there are additional documents to be e-filed simultaneously with it, please e-file those documents under the selection **Correspondence**.
  - After an Extension of Time has already been e-filed, any **additional** materials to add to the Extension of Time should be e-filed under **Correspondence**.
2. **File an Appeal:** If the Charging Party does not agree with the Region's decision on the case, an Appeal can be e-filed.
  - Only **one (1) Appeal** can be e-filed to **each** determination in the Region's decision letter that is received.
  - After an Appeal has been e-filed, any **additional** materials to add to the Appeal should be e-filed under **Correspondence**.
3. **Notice of Appearance:** Either party can e-file a Notice of Appearance if there is a new counsel representing one side or a different counsel.
  - This document is only e-filed with the Office of Appeals after a decision has been made by the Region.
  - This document can be e-filed **before** an Appeal is e-filed.
4. **Correspondence:** Parties will **select** Correspondence when adding documents or supplementing the Appeal or Extension of Time.
  - Correspondence is used to e-file documents **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.
5. **Position Statement:** The Charging Party or Charged Party may e-file a Position Statement.
  - The Charging Party will e-file this document as a supplement of the Appeal.
  - The Charged Party will specifically file one to support the Region's decision.
  - This document should be e-filed **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.
6. **Withdrawal Request:** If the Charging Party decides to no longer pursue their appeal, he/she can e-file a Withdrawal Request to the Office of Appeals.
  - This document should be e-Filed **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.



7. The selections of **Evidence** or **Other** should no longer be used.



**From:** [Bean, Terrance M.](#)  
**To:** [Eastland, Keith E.](#)  
**Subject:** NLRB Case No. 07-CA-279243, Kellogg  
**Date:** Thursday, September 16, 2021 10:36:00 AM  
**Attachments:** [image001.png](#)

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Hi Keith –

You should have received the dismissal letter in the subject line mentioned case issued on September 14. In the decisional document, the Region articulated that “While the Employer posted a tentative list earlier than its prior practice, it continued the practice of posting a final list on Thursdays and not mandating anyone to work overtime on the weekend who was not present at work on the Thursday before.” This section of the letter was based in large part on the representation the Company made in its position statement that “Employees listed on the earlier notice will report to work as reflected on the weekend schedule unless they are notified of a change after the volunteer list deadline on Thursday morning and after schedule are finalized.”

I received a telephone call from the Charging Party Union after the letter issued that local management was not in agreement with either of the above representations, and that it intended to appeal our decision on that basis. The Union indicated that an appeal may be avoided, however, if clarification and assurances are provided to the Union that local management will abide by the representations made in the Company’s statement of position. Please let me know if you have any questions in this regard.

Very Respectfully,



Terrance Bean  
Field Examiner  
National Labor Relations Board  
Region 7 – Resident Office

**Direct:** (616)930-9159

**Fax:** (616)456-2596

Gerald R. Ford Federal Building  
110 Michigan Street N.W. Suite 299  
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Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site ([www.nlr.gov](http://www.nlr.gov)).

**From:** [Bean, Terrance M.](#)  
**To:** ["Orin Holder"](#)  
**Subject:** NLRB Case No. 07-CA-279243, Kellogg  
**Date:** Monday, September 27, 2021 7:35:00 AM  
**Attachments:** [image001.png](#)

---

Good morning Orin –

My apologies for the delay in getting back to you. I can confirm that I have reached out to the Company's attorney regarding the Union's concerns that we discussed last week, and requested that he reach out to local management to address those concerns and to ensure everyone is on the same page as to what remedy the Union is seeking. As a friendly reminder, the appeal period closes tomorrow, September 28, so if you do not hear from management soon, you may consider appealing the dismissal of your charge if you choose to do so. Please let me know if I can be of any more assistance.

Respectfully,



Terrance Bean  
Field Examiner  
National Labor Relations Board  
Region 7 – Resident Office

**Direct:** (616)930-9159

**Fax:** (616)456-2596

Gerald R. Ford Federal Building  
110 Michigan Street N.W. Suite 299  
Grand Rapids, Michigan 49503-2313

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Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)).

Confirmation Number	1054030203
Date Submitted	Tuesday, September 28, 2021 2:48 PM (UTC-05:00) Eastern Time (US & Canada)
Case Name	Kellogg Company
Case Number	07-CA-279243
Filing Party	Charging Party
Name	Orin Holder
Email	blocal70@aol.com
Address	158 36th street se Grand Rapids MI 49548
Telephone	6162437383
Fax	6162435624

This constitutes my appeal. I am NOT filing any additional materials in support of my appeal.



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570

September 30, 2021

ORIN HOLDER  
LOCAL 70, BAKERY, CONFECTIONARY,  
TOBACCO WORKERS AND GRAIN  
MILLERS INTERNATIONAL UNION  
(BCTGM), AFL-CIO  
158 36<sup>TH</sup> ST SE  
GRAND RAPIDS, MI 49548-2260

Re: Kellogg Company  
Case 07-CA-279243

Dear Mr. Holder:

We have received your timely appeal from the Region's decision in the above-captioned case. We will assign your appeal for processing in accordance with Agency procedures. Please be assured that our review of this matter will include a full analysis of the underlying investigatory file, your appeal, as well as current Board law and processes.

We will notify you and all involved parties of our decision by letter via email as permitted under Section 102.4(c) of the Board's *Rules and Regulations*. If an email address is not available for you, we will provide the decision by mail.

Sincerely,

Jennifer A. Abruzzo  
General Counsel

A handwritten signature in black ink that reads "Mark E. Arbesfeld". The signature is written in a cursive, flowing style.

By: \_\_\_\_\_

Mark E. Arbesfeld, Director  
Office of Appeals



cc: ELIZABETH KERWIN  
ACTING REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
BOARD  
PATRICK V. MCNAMARA  
FEDERAL BUILDING  
477 MICHIGAN AVE RM 05-200  
DETROIT, MI 48226

(b) (6), (b) (7)(C)  
KELLOGG COMPANY  
310 28<sup>TH</sup> ST SE  
GRAND RAPIDS, MI 49548-1157

NICOLE M. PERRY, ESQ.  
KELLOGG COMPANY  
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UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570

October 15, 2021

ORIN HOLDER, BUSINESS AGENT  
LOCAL 70, BAKERY,  
CONFECTIONARY, TOBACCO  
WORKERS AND GRAIN MILLERS  
INTERNATIONAL UNION (BCTGM),  
AFL-CIO  
158 36TH ST SE  
GRAND RAPIDS, MI 49548-2260

Re: Kellogg Company  
Case 07-CA-279243

Dear Mr. Holder:

Your appeal from the Acting Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Acting Regional Director's letter of September 14, 2021.

The charge alleges that the Employer has failed and refused to bargain collectively and in good faith with the Union by making unilateral changes to past practices, in violation of Sections 8(a)(1) and (5) of the National Labor Relations Act. In that regard, under Board law, unilateral actions by an employer that materially, substantially, or significantly modify terms or conditions of employment constitute a per se violation of Section 8(a)(5) of the Act.

The evidence disclosed by the investigation indicated that the Employer's action in the instant case consists solely of posting a list of tentative overtime assignments on Wednesdays instead of Thursdays. We determined that such isolated action does not constitute a "material, substantial or significant" change to any term or other condition of employment and, therefore, does not amount to an unlawful unilateral change. While the Employer posted a tentative list earlier than its prior practice, it continued the practice of posting the final list on Thursdays and not mandating anyone to work overtime on the weekend who was not present at work on the Thursday before. As such, the posting of the Wednesday list does not result in a material, substantial, or significant change to employees' terms and conditions of employment.

Accordingly, the appeal is denied.

Sincerely,

Jennifer A. Abruzzo  
General Counsel



By:

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Mark E. Arbesfeld, Director  
Office of Appeals

cc: ELIZABETH KERWIN  
ACTING REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
BOARD  
PATRICK V. MCNAMARA FEDERAL  
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**(b) (6), (b) (7)(C)**  
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